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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BADRUDIN KURWA, Plaintiff and Appellant, v. MARK B. KISLINGER, et al., Defendants and Respondents.	B264641 (Los Angeles County Super. Ct. No. KC045216)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan Thomas Oki, Judge. Appeal dismissed.

Robert S. Gerstein and Steven H. Gardner, for Plaintiff and Appellant.

Harrington Foxx Dubrow & Canter, Dale B. Goldfarb, for Defendants and Respondents.

Plaintiff, cross-defendant, and appellant Badrudin Kurwa filed a June 1, 2015 notice of appeal (the 2015 appeal) from the judgment entered on August 23, 2010 (the 2010 judgment), in favor of defendants, cross-complainants, and respondents Mark Kislinger, et al. This court issued an order to show cause to determine if Kurwa's 2015 appeal should be dismissed. We conclude that Kurwa has taken an untimely appeal from a nonfinal judgment. The appeal is dismissed.

The trial court in 2010 made in limine rulings adverse to Kurwa as to some causes of action contained in Kurwa's complaint. The parties thereafter stipulated that defamation causes of action in both the complaint and cross-complaint would be dismissed without prejudice with waivers of the statute of limitations. Kurwa then filed a notice of appeal from the 2010 judgment. A majority of this court determined that Kurwa had taken an appeal from a final judgment, disagreeing with a line of cases beginning with *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115 (*Don Jose's*). The *Don Jose's* court had held that a dismissal without prejudice combined with a waiver of the statute of limitations resulted in a non-final judgment for purposes of appeal. Our Supreme Court granted review and reversed, holding that "the parties' agreement holding some causes of action in abeyance for possible future litigation after an appeal from the trial court's judgment on others renders the judgment interlocutory and precludes an appeal under the one final judgment rule." (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100 (*Kurwa*).)

The cause returned to the trial court after issuance of the remittitur. Kurwa attempted to perfect a final judgment. In 2014, Kurwa sought to extricate himself from the 2010 stipulation waiving the statute of limitations by (1) moving to rescind the stipulation, (2) having the trial court reconsider its adverse rulings made in 2010 judgment, and (3) having the court set aside the stipulation on the ground of impossibility. The trial court rejected Kurwa's efforts. This court denied Kurwa's petition for writ of mandate, and review was unanimously denied by the Supreme Court.

Taking a different approach in 2015, Kurwa moved to amend his operative complaint to add a cause of action for rescission of the stipulation due to mistake of law. The trial court denied Kurwa's motion, and a majority of this court again denied Kurwa's petition for writ of mandate. Review was denied by the Supreme Court.

On April 23, 2015, Kurwa filed a dismissal of his defamation cause of action with prejudice. On June 1, 2015, Kurwa filed the current notice of appeal, specifying that the appeal is taken from the 2010 judgment. We again conclude Kurwa is before this court on a defective notice of appeal.

First, the 2015 notice of appeal from the 2010 judgment is untimely. A notice of appeal must generally be filed within 60 days of a judgment, but in no instance more than 180 from entry of judgment. (Cal. Rules of Court, rule 8.104 (a)(1)(A)-(C).) On its face, the notice of appeal filed five years after judgment is untimely as a matter of law.

Second, even if the appeal can be construed as timely, the problem in *Kurwa* continues to exist because Kislinger's defamation cause of action *in the cross-complaint* remains outstanding with a waiver of the statute of limitations. The impact of an extant cause of action *in a cross-complaint* with a statute of limitations waiver was specifically addressed in *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434 (*Hill*), a case cited with approval in *Kurwa*. The *Kurwa* court described *Hill* as follows:

"In *Hill* [], after the superior court decided for the defense on certain causes of action, the parties stipulated that two causes of action in a cross-complaint were to be '"[d]ismissed without prejudice and the statute of limitations is tolled until 30 days after remittitur to the Superior Court."' (*Id.* at p. 442.) The Court of Appeal, following *Don Jose's* and the other cases discussed above, held the judgment nonfinal and nonappealable. 'In effect, the judgment keeps these causes of action undecided and legally alive for future resolution in the trial court. If we allowed the instant appeal to proceed, Clovis would remain free to refile the dismissed claims and try them in the superior court if our opinion made such action necessary or advisable. As such, the

stipulated "judgment" from which this appeal was taken is not final.' (*Hill* [], *supra,* at p. 445.)" (*Kurwa*, *supra*, 57 Cal.4th at p. 1104.)

Kurwa contends the issue is not controlled by *Hill*, but instead by *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525 fn. 8 (*Vedanta*), which states: "Because Vedanta prevailed, the fact that it dismissed certain claims in its complaint without prejudice does not make the judgment any less appealable. *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115 and its progeny have no application where the party dismissing causes of action without prejudice is the *respondent* on appeal." According to Kurwa, "Assuming that the *Vedanta Society* decision remains good law following [*Kurwa*], the order of August 23, 2010 became a final judgment on April 23, 2015, and Appellant's June 1, 2015 notice of appeal from that judgment was timely."

Vendanta is not controlling. The question of appealability was not a disputed issue on appeal in *Vendanta*. An appellate opinion is not authority for everything stated in it, and cases are not authority for issues not in dispute. (*People v. Knoller* (2007) 41 Cal.4th 139, 155; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) Moreover, *Vedanta* did not include a waiver of the statute of limitations, and as a result, the footnote discussion of appealability does not address the scenario in this case. Finally, our Supreme Court's approval of *Hill* in *Kurwa* makes clear that the *Don Jose's* line of cases applies when a cause of action *in a cross-complaint* is dismissed without prejudice with a waiver of the statute of limitations. That is precisely what happened here.

Kurwa argues that *Hill* is not entitled to such deference, because in *Hill's* disposition the appellate court ordered the trial court to "vacate the judgment and the stipulation on which it is based." (*Hill*, *supra*, 63 Cal.App.4th at p. 446.) The *Hill* court noted that the appellants "may still challenge the trial court's rejection of their . . . contention if and when Clovis's first and third causes of action are adjudicated or otherwise disposed of and appellants file a timely appeal from the ultimate judgment[,]" and that the "appellants retain the right of appellate review at the appropriate time, but not earlier." (*Ibid*.) In a subsequent appeal stemming from the same action, the appellate

court noted, "The parties added provisions to the stipulated judgment which resolved the first and third causes of action in the city's cross-complaint, which had not been addressed earlier," resulting in a final and appealable judgment. (*Hill v. City of Clovis* (2000) 80 Cal.App.4th 438, 445.)

We fail to see how the developments following the dismissal of the initial appeal in *Hill* provide support for Kurwa's position. Our Supreme Court in *Kurwa* did not order the trial court to vacate the judgment and stipulations. As *Hill* itself cautioned, the appellants could obtain appellate review, but not until all causes of action were resolved. (*Hill*, *supra*, 63 Cal.App.4th at p. 446.) Kurwa bargained for Kislinger to dismiss his defamation cause of action without prejudice with a waiver of the statute of limitations, and he is bound by that agreement, the result of which is that Kislinger's defamation cause of action has not been resolved. "When, as here, the trial court has resolved some causes of action and the others are voluntarily dismissed, but the parties have agreed to preserve the voluntarily dismissed counts for potential litigation upon conclusion of the appeal from the judgment rendered, the judgment is one that 'fails to complete the disposition of all the causes of action between the parties' [citation] and is therefore not appealable." (*Kurwa*, *supra*, 57 Cal.4th at p. 1105.)

Finally, we deny Kurwa's request to treat the appeal as a petition for writ of mandate. This court has twice before denied mandate relief. Treating this appeal as a petition for writ of mandate, allowing pretrial review of rulings on in limine motions which do not resolve all causes of action, would be inconsistent with the reasoning in *Kurwa* and the numerous cases cited therein.

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

KRIEGLER, Acting P. J.

We concur:

BAKER, J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.