Case No. S241057

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.J., A MINOR, BY HER GUARDIAN AD LITEM, ERICK JIMENEZ,

Petitioner/Plaintiff,

LUIS A. CARRILLO,

Petitioner/Objector,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT et al.,

Respondents.

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B269864
Los Angeles County Superior Court, Case No. BC505356
(The Honorable William P. Barry)

PETITIONER'S OPENING BRIEF ON THE MERITS

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Does the Court of Appeal lack jurisdiction over an appeal from an order imposing sanctions on an attorney if the notice of appeal is brought in the name of the client rather than in the name of the attorney?

SUMMARY OF ARGUMENT

The instant matter arises from a series of events that ultimately culminated in the trial court erroneously sanctioning an attorney, Mr. Luis A. Carrillo, $16,111.00 in fees and costs related to a contempt hearing *after* the Court of Appeal in the related case *In re Luis Carrillo*, Appellate Case No. B267743 issued a temporary stay of the contempt order. Mr. Carrillo was the attorney for the minor plaintiff, K.J., in the underlying matter. Seeking to challenge the trial court's erroneous award of $16,111.00 in fees and costs to the Los Angeles Unified School District ("LAUSD"), a notice of appeal was filed that maintained the same case name and caption as at the trial level. The notice of appeal also notified the LAUSD that the appeal was being made pursuant to Code of Civil Procedure section 904.1(a)(3)-(13), from a trial court order entered on December 1, 2015.

On appeal, the issues raised concerned only the $16,111.00 in sanctions imposed by the trial court against Mr. Carrillo. Mr. Carrillo specifically argued that the trial court's award of fees and costs relating to his contempt proceeding was improper because the order was made in violation of the Court of Appeal's stay order, the sanctions were not authorized by the pertinent discovery statutes, and the order impermissibly awarded LAUSD fees and costs for expenses

that, at the time, LAUSD had not yet incurred. LAUSD argued that the case caption on the Notice of Appeal listed only K.J. as the appealing party, that K.J. lacked standing to bring the appeal on Mr. Carrillo's behalf, and LAUSD substantively responded to Mr. Carrillo's arguments concerning the trial court's order sanctioning Mr. Carrillo and awarding LAUSD $16,111.00.

After the completion of briefing and oral argument, the Court of Appeal issued its opinion on February 23, 2017, dismissing the appeal on the basis that it lacked jurisdiction to review the sanctions ruling because Mr. Carrillo, not K.J., was the aggrieved party, but was not the party listed on the notice of appeal. In doing so, the Court of Appeal ignored the fact that Mr. Carrillo had standing to appeal the trial court's order sanctioning him in the amount of $16,111.00 in fees and costs, declined to liberally construe the notice of appeal to decide the case on its merits, and relied on two Court of Appeal opinions that contravene longstanding public policy that favors deciding appeals on their merits.

I. STATEMENT OF THE CASE AND FACTS

A. FACTS CONCERNING THE APPEALABLE TRIAL COURT ORDER

The underlying case commenced on April 9, 2013 and concerns K.J., a minor, and her allegations against Respondents for the sexual assault she suffered at an elementary school within the LAUSD. (Appellant's Appendix ["AA"] 000011.) As litigation progressed, the parties engaged in a discovery dispute regarding whether the minor could be interviewed about the sexual assault. Although K.J. had

previously described her sexual assault to a medical examiner and at three deposition sessions (AA000403-00404), LAUSD sought to subject K.J. to an independent medical examination ("IME") to again recount her sexual assault. (See AA000001.) The trial court eventually ruled that LAUSD could conduct the IME. Prior to the examination, Mr. Carrillo approached the medical examiner and requested that he be mindful of K.J.'s condition and limit his questions concerning the details of the sexual assault. (See AA0001117.) LAUSD characterized this interaction as Mr. Carrillo interfering with the IME. Mr. Carrillo's interaction with the medical examiner served as the basis for the trial court setting a contempt hearing against Mr. Carrillo. (See AA000358.)

On September 30, 2015, the trial court held a contempt hearing against Mr. Carrillo, wherein it found Mr. Carrillo in contempt of court for actions he believed were necessary to protect his client from suffering re-traumatization at the hands of LAUSD's expert independent medical examiner. (See AA000386.) LAUSD filed its motion for fees and costs on or about October 2, 2015. (See AA000362.) On October 13, 2015, the trial court entered an order sentencing Mr. Carrillo to 24 hours in jail and permitting LAUSD to apply for fees and costs it incurred related to the contempt hearing. (AA000387-000389.) Mr. Carrillo subsequently filed his Petition for Writ of Habeas Corpus with the California Court of Appeal in the related case *In re Luis Carrillo*, Appellate Case No. B267743, on October 23, 2015, challenging the trial court's finding of contempt and sentence of imprisonment. (See Request for Judicial Notice

["RJN"],[1] Exhibit A.) On November 9, 2015, after Mr. Carrillo filed his Writ Petition challenging the trial court's October 13, 2015 Order, LAUSD filed a supplemental motion for fees and costs related to Mr. Carrillo's contempt proceeding pursuant to the trial court's same October 13, 2015 Order. (See AA000557.)

On October 26, 2015, the Court of Appeal, in Case No. B267743, issued an order temporarily staying the trial court's October 13, 2015 Order pending further order of the Court of Appeal. (See RJN, Exhibit B.) Notwithstanding that stay, the trial court held a hearing on and granted LAUSD's motion for fees and costs on December 1, 2015, awarding LAUSD $16,111. (AA000978.) A portion of the fees and costs pertained to Mr. Carrillo's contempt hearing (see RT0027:28; RT0028:1-14; RT0029:20-22), and the trial court declared that "this particular decision will stand, in my view, regardless of what the appellate decision is" in *In re Luis Carrillo*, Appellate Case No. B267743. (RT0031:27-28.)

Eventually, on January 8, 2016, the Court of Appeal issued a *Palma* Notice[2] to the trial court in *In re Luis Carrillo*, Appellate Case No. B267743, explaining that the trial court could avoid the issuance of the Writ by vacating its October 13, 2015 Order. (See RJN, Exhibit D.) The trial court subsequently entered a new order on January 29, 2016, vacating its October 13, 2015 Order, which found Mr. Carrillo in contempt. (See RJN, Exhibits E and F.) However, according to the trial court, the December 1, 2015 Order awarding fees and costs—

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[1] All references herein to the Request for Judicial Notice concern the RJN filed with the California Court of Appeal.

[2] *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

which related to the contempt hearing—was still in effect. (RJN, Exhibits F.)

B. FACTS CONCERNING MR. CARRILLO'S APPEAL

On January 26, 2016, a timely notice of appeal was filed pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12), "[f]rom an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)." (AA000980.) The notice of appeal concerned the trial court's December 1, 2015 Order and retained the same case caption and party names of the underlying trial court case in which the sanctions order was issued. (See *ibid.*)

The Opening Brief was filed on May 12, 2016 and concerned only the $16,111.00 sanction imposed by the trial court against Mr. Carrillo. (See generally Appellant's Opening Brief [hereinafter "AOB"].) Mr. Carrillo argued that the trial court's order sanctioning him and awarding LAUSD $16,111.00 in fees and costs, some or all of which derived from the trial court's contempt hearing, was in violation of the Court of Appeal's temporary stay order in the related case *In re Luis Carrillo*, Appellate Case No. B267743, and, thus, void. (AOB at pp. 18-24.) Additionally, Mr. Carrillo argued that the trial court's award constituted an abuse of discretion because the fees and costs were associated with a contempt proceeding in which the court's finding of contempt was ultimately vacated (AOB at pp. 24-27), the sanctions were not authorized by the pertinent discovery statutes (AOB at pp. 27-29), and the order awarded LAUSD fees and costs for purported extra expenses that, at the time, LAUSD had not yet incurred. (AOB at pp. 29-32.)

LAUSD filed its Respondents' Brief on August 10, 2016. Relying on *People v. Indiana Lumbermens Mutual Insurance Company* (2014) 226 Cal.App.4th 1[3] (hereinafter "*Lumbermens*"), LAUSD argued that the appeal should be dismissed since the case caption on the notice of appeal listed K.J. as the appealing party and that K.J. lacked standing to bring the appeal on Mr. Carrillo's behalf. (Respondents' Brief ["RB"] at pp. 5-7.) Notwithstanding, LAUSD also responded to Mr. Carrillo's arguments within the AOB, including the counterarguments that "the issuance of a writ by the courts of appeal does not automatically stay all proceedings in the trial court" (RB at pp. 10-12), that the trial court did not abuse its discretion in sanctioning Mr. Carrillo and awarding LAUSD $16,111.00 (RB at pp. 13-17), and that the trial court's award was not based on its previous order finding Mr. Carrillo in contempt. (RB at pp. 18-19.)

Mr. Carrillo filed his Reply Brief on August 30, 2016. In pertinent part, Mr. Carrillo argued that LAUSD's reliance on *Lumbermens* was misplaced because it is factually distinguishable and because the Court of Appeal should interpret the notice of appeal liberally and resolve the appeal on its merits. (See Reply Brief at pp. 7-11.)

Oral argument took place on December 12, 2016 before Division Three of the Second Appellate District for the Court of Appeal, and the Court of Appeal filed its opinion dismissing Mr. Carrillo's appeal on February 23, 2017. In its opinion, the Court of

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[3] *Lumbermens* was decided by the Court of Appeal for the Second Appellate District, Division Three, the same division the instant matter was heard.

Appeal noted that the notice of appeal listed only underlying plaintiff K.J. as the appellant. (COA Opn. at p. 7.) Relying on its decision in *Lumbermens* as controlling, the Court of Appeal reasoned that because "attorney Carrillo has not appealed" and "because K.J. was not sanctioned," the court "lack[s] jurisdiction to review the sanctions ruling." (*Id.* at p. 8.) In finding it was without jurisdiction to review the sanctions ruling, the Court of Appeal declined to liberally construe the notice of appeal and resolve the case on its merits, explaining that "the weight of authority counsels against stretching liberal construction requirements so far as to deem a notice of appeal to include an unnamed party." (*Id.* at p. 10.) As set forth below, this determination was made in error.

II. STANDARD OF REVIEW

"On review, the question of jurisdiction is, in essence, one of law" that is reviewed de novo. (See *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 568, citing *Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267.)

III. ARGUMENT

In its opinion, the Court of Appeal determined that it lacked jurisdiction to review Mr. Carrillo's appeal of the trial court's order imposing $16,111.00 in sanctions against him. As set forth below, the Court of Appeal's determination was erroneous based on two grounds. First, the Court of Appeal had the authority to liberally construe the notice of appeal and deem the appeal to be that of Mr. Carrillo, and not K.J., where it is reasonably clear what was being appealed from

and where the respondent could not have been misled or prejudiced. Secondly, the Court of Appeal's decision contravenes California's strong policy of resolving appeals on their merits.

A. THE COURT OF APPEAL DOES NOT LACK JURISDICTION OVER AN APPEAL FROM AN ORDER IMPOSING SANCTIONS ON AN ATTORNEY IF THE NOTICE OF APPEAL IS BROUGHT IN THE NAME OF THE CLIENT RATHER THAN THE NAME OF THE ATTORNEY

1. Legal Standard Regarding Standing to Appeal and Liberal Construction of the Notice of Appeal

It is well settled that an appeal may be taken only by those individuals who have standing to appeal. (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) "Only a party who is aggrieved has standing to appeal." (*Ibid.*) "A party is aggrieved only if its 'rights or interests are injuriously affected by the judgment.'" (*Ibid.*, citing *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) An attorney against whom a trial court has imposed monetary sanctions is an aggrieved party who has standing to appeal the sanctions order. (See *Imuta v. Nakano* (1991) 233 Cal.App.3d 1570, 1581, 1585.)

"A party seeking to appeal must file a notice of appeal within 60 days after [the party] is served with a notice of entry of either a judgment or an appealable order, or within 180 days after entry of judgment, whichever is earlier." (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 330 (dis. opn. of Kennard, J.).) A notice of appeal "is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100, subd. (a)(1).) Further, the "notice of appeal *must* be construed liberally" (*ibid.*, emphasis added), and such construction is appropriate where "'it is reasonably clear what

appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.'" (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1249, citing *Luz v. Lopes* (1960) 55 Cal.2d 54, 59; see *Internat. Assn. of Firefighters Local Union 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1194, fn. 4.)

2. The Court of Appeal Has Jurisdiction Over an Appeal Under the Circumstances of the Instant Case Through the Doctrine of Liberal Construction

As explained below, case law supports a finding that the Court of Appeal has jurisdiction over an appeal of an order imposing sanctions on an attorney where the notice of appeal omits the sanctioned attorney's name. The Court of Appeal must liberally construe the notice of appeal, and should have done so in the instant matter because it was clear what Mr. Carrillo tried to appeal from and Respondents could not have been misled or prejudiced.

a. Legal Precedent Establishing that the Court of Appeal May Liberally Construe a Notice of Appeal to Include an Omitted Party and Exercise Jurisdiction Over the Appeal

In California, at least two published Court of Appeal opinions aptly demonstrate the application of the doctrine of liberal construction to a notice of appeal wherein a sanctioned attorney's name was omitted—*Kane v. Hurley* (1994) 30 Cal.App.4th 859 (hereinafter "*Kane*") and *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967 (hereinafter "*Eichenbaum*"). As these cases demonstrate, by liberally construing the notice of appeal, an appellate court has jurisdiction over an appeal from an order imposing sanctions on an attorney where the notice of appeal is brought in the name of the client rather than the name of the attorney.

Kane, *supra*, 30 Cal.App.4th 859 concerned an attorney, Jonathan Cole, who represented another attorney, Jack Willis, in relation to a trial court's *coram nobis* writ review of an order imposing sanctions against Willis.[4] (See *id.* at pp. 860-861.) During the course of the writ proceeding, Cole had filed a request for judicial notice and was eventually sanctioned by the trial court; the trial court found that the attorney's request for judicial notice was without merit and made for the purpose of bringing inadmissible information to the attention of the court. (*Id.* at p. 861.) The trial court ordered Cole to pay sanctions in the amount of $1,500. (*Id.*) Consequently, Cole appealed; however, "[t]he notice of appeal was filed by [Cole] on behalf of Attorney Willis." (*Id.* at p. 861, fn. 4.) Rather than dismiss the appeal for lack of jurisdiction, the *Kane* Court "liberally construe[d] the notice to include appellant [Cole]," while noting that it would be a better practice for the sanctioned attorney to file a separate notice of appeal. (*Id.*)

Likewise, *Eichenbaum*, *supra*, 106 Cal.App.4th 967 concerned a trial court's order imposing sanctions against a plaintiff and the plaintiff's attorney.[5] (*Id.* at pp. 972-973.) The plaintiff appealed,

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[4] Jonathan Cole is referred to as the appellant in the Court of Appeal's opinion in *Kane*. For clarity, Cole and Willis are referred to using their names rather than their similar titles as attorneys.

[5] In its opinion, the Court of Appeal rejected Mr. Carrillo's reliance on *Eichenbaum*, *supra*, 106 Cal.App.4th 967, reasoning that the case is distinguishable because, there, the appeal of the sanction award "was ordered jointly against both the client and the attorney," whereas the sanctions in the instant case were levied only against Mr. Carrillo. (COA Opn. at p. 10, fn. 5.) The Court of Appeal, however, did not explain the materiality of this difference or how it "stretch[es] the

naming only the plaintiff, and not his counsel, as the appellant on the notice of appeal. (*Id.* at p. 974.) On appeal, the respondent contended that "because the notice of appeal named as appellant only plaintiff, not his counsel, [the Court of Appeal] lack[s] jurisdiction to review the sanctions order insofar as it applies to counsel." (*Id.*) Rejecting this argument, the Court of Appeal for the Second Appellate District found it appropriate to apply the doctrine of liberal construction to the notice of appeal, and deemed the notice of appeal that named only the plaintiff to also include the plaintiff's attorney. (*Id.*, citing *Kane*, *supra*, 30 Cal.App.4th at p. 861, fn. 4.)

In a similar vein, this Court has also previously liberally construed a notice of appeal to include the name of an aggrieved party whose name was omitted from the notice of appeal in *Chung Sing v. Southern Pac. Co.* (1918) 178 Cal. 261 (hereinafter "*Chung Sing*"). *Chung Sing* concerned a respondent's motion to dismiss an appeal with respect to one of the three appellants, Geo. W. Blackburn, on the basis that no notice of appeal was filed on Blackburn's behalf. (*Id.* at p. 262.) The notice of appeal had correctly listed the other two appellants, Southern Pacific Company and H.W. Crumrine, but also incorrectly inserted the name C.A. Burton, who was not a party to any proceedings, in lieu of Blackburn by mistake and inadvertence. (*Id.*) Despite the omission of Blackburn's name from the notice of appeal, this Court concluded that a notice of appeal was filed on his behalf

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liberal construction requirement so far as to deem a notice of appeal to include an unnamed party" (*id.* at p. 10), considering that the attorney in *Eichenbaum* was also an unnamed party. (See *Eichenbaum*, *supra*, 106 Cal.App.4th at p. 974.)

within the time allotted by law. (*Id.* at p. 263.) In so finding, this Court reasoned:

> The verdict and judgment in the cause were against the Southern Pacific Company, Geo. W. Blackburn, and H. W. Crumrine only, all of whom were represented in the action by the same attorneys. There was no verdict or judgment against any one named Burton. The notice of appeal also refers to an order of the superior court made and entered September 12, 1916, granting in part and denying in part 'said defendants' motion for new trial.' The record shows that said motion was made by the Southern Pacific Company, H. W. Crumrine, and Geo. W. Blackburn only, and that no one named Burton was involved therein. It also refers to the order of March 30, 1917, reducing the judgment from $18,000 to $13,000, which the record shows was an order making such reduction in favor of the company, Blackburn, and Crumrine only, and declaring that the judgment should be for $13,000 and costs as against each of them. No one named Burton was involved therein. An undertaking on appeal filed on the day the notice of appeal was served states that the appeal is by defendants Southern Pacific Company, Geo. W. Blackburn, and H. W. Crumrine. *It seems perfectly apparent from the notice, when read in connection with the record, that such notice was filed on behalf of the three defendants against whom the judgment runs, and that the use of the name 'C. A. Burton' instead of 'George W. Blackburn' to designate one of the appellants was solely due to inadvertence—a mere clerical misprision.* One of the three defendants against whom the judgment runs and on whose behalf it was desired to appeal was designated as 'C. A. Burton' instead of 'George W. Blackburn.' *The record demonstrates this, and the adverse party could not have been misled thereby.* Under these circumstances we are satisfied it should not be held that no notice of appeal was filed by Blackburn.

(*Id.* at pp. 263-264, emphasis added.) In other words, this Court analyzed whether it was reasonably clear what was being appealed

from and whether the respondent could have been misled or prejudiced by liberally construing the notice of appeal to include the name of the omitted party.

Ultimately, *Kane*, *Eichenbaum*, and the analysis in *Chung Sing* demonstrate that an appellate court has jurisdiction over an appeal of an order imposing sanctions on an attorney where the notice of appeal is brought in the name of the client rather than the name of the attorney.

b. The Court of Appeal Should Have Exercised its Jurisdiction Over the Instant Case

The factual circumstances of the instant case are analogous to *Kane* and *Eichenbaum*, and the lower appellate court should have exercised its jurisdiction over Mr. Carrillo's appeal. Here, the notice of appeal of the trial court's order imposing sanctions against Mr. Carrillo was brought in the name of Mr. Carrillo's client, K.J., rather than Mr. Carrillo. The notice of appeal merely retained the same case caption and party names of the underlying trial court case in which the sanctions order was issued.

Additionally, consistent with this Court's analysis in *Chung Sing*, liberal construction of the notice of appeal was warranted. It was reasonably clear to Respondents what was being appealed from and Respondents could not have been misled or prejudiced. Although the notice of appeal listed K.J. as the appealing party, it is unequivocally clear that Mr. Carrillo was the actual appellant and that he was appealing the trial court's order imposing $16,111.00 in sanctions against him. To be sure, the notice of appeal clearly indicates that the order being appealed from is the December 1, 2015

Order, which was imposed only against Mr. Carrillo, and that the appeal was sought pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12) (permitting an appeal from an order directing payment of monetary sanctions by a party or attorney if the amount exceeds $5,000). Mr. Carrillo—and no other party—was ordered by the trial court to pay monetary sanctions to LAUSD; consequently, the only reasonable conclusion that Respondents could have reached from reviewing the notice of appeal and Appellant's briefing was that *Mr. Carrillo* was appealing the trial court's order awarding LAUSD $16,111.00 in fees and costs.

Furthermore, Respondents unequivocally could not articulate how they would be have been misled or prejudiced by the Court of Appeal liberally construing the appeal to be that of Mr. Carrillo. The Respondents' Brief concedes as much, clearly identifying and comprehending the basis of Mr. Carrillo's appeal in its introduction, providing, "In this case, Appellant seeks to set aside the trial court's discovery order dated December 1, 2015. In that order, the trial court awarded attorney's fees to Respondent . . . for discovery abuses by Appellant's attorney of record, Luis A. Carrillo." (RB at p. 5.) Additionally, Respondents attempted to directly address the arguments set forth in the Appellant's Opening Brief, countering that the Court of Appeal Stay issued in *In re Luis Carrillo*, Appellate Case No. B267743 did not preclude the trial court from making an award of attorney's fees (RB at pp. 10-13), that the trial court's award of $16,111 for the violation of the LAUSD expert's rights under the Code of Civil Procedure—*in Mr. Carrillo's efforts to protect the child plaintiff from further re-traumatization*—was not an abuse of

discretion (RB at pp. 13-17), and that the trial court's award of sanctions was not based on Mr. Carrillo's contempt hearing. (RB at pp. 18-19.)

Ultimately, Respondents would not have been misled or prejudiced by the Court of Appeal liberally construing the notice of appeal and hearing the appeal on its merits, consistent with *Kane*, *Eichenbaum*, and *Chung Sing*. Consequently, the Court of Appeal erred by declining to apply the doctrine of liberal construction to the notice of appeal and determining that it lacked jurisdiction to resolve the substantive arguments of the appeal.

B. RELIANCE ON *LUMBERMENS* AND *CALHOUN* WOULD CONTRAVENE PUBLIC POLICY

In California, there is "strong public policy in favor of hearing appeals on the merits," which "operates against depriving an aggrieved party or attorney of a right to appeal because of noncompliance with technical requirements." (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497.) The lower appellate court, however, declined to resolve Mr. Carrillo's appeal on the merits on the basis that *Lumbermens* is controlling. Quoting *Lumbermens*, the Court of Appeal explained:

> "We lack jurisdiction to review the sanctions ruling because the sanctioned attorney, Rorabaugh, did not appeal. The sole appellant is Indiana, the defendant surety. However, Indiana is not aggrieved by the sanctions ruling because it was not ordered to pay sanctions (Code Civ. Proc., § 902), and it cannot appeal the sanctions award on Rorabaugh's behalf."

(COA Opn. at p. 8, citing *Lumbermens*, *supra*, 226 Cal.App.4th at p. 10.)

The underlying appellate court elaborated further, noting that *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42 (hereinafter *Calhoun*) was directly on point. The Court of Appeal explained that the *Calhoun* Court similarly noted that it had lacked jurisdiction to review a sanctions ruling because:

> [the] "purported appeal is not by the sanctioned attorney . . . but by the plaintiff. . . . [A]ny right to appeal was vested in [the attorney], not [the plaintiff]. Had [the attorney] included himself as an additional appellant in [the plaintiff's] notice of appeal, we could have liberally construed the notice of appeal in favor of its sufficiency, but [the attorney] did not do so."

(COA Opn. at p. 9, citing *Calhoun*, *supra*, 20 Cal.App.4th at p. 42.)

Significantly, the *Lumbermens* and *Calhoun* decisions are devoid of any fruitful analysis as to why the Court of Appeal declined to liberally construe the notice of appeal and resolve the sanctions issues on their merits. The *Lumbermens* Court relied on *Calhoun*, and did not independently analyze whether it should liberally construe the notice of appeal. The *Calhoun* Court, in turn, briefly considered applying the doctrine of liberal construction to the notice of appeal; however, its reason for declining to do so is flawed. The *Calhoun* Court noted that had the attorney included himself in the notice of appeal as an appellant, it could have liberally construed the notice of appeal in favor of its sufficiency. (*Calhoun*, *supra*, 20 Cal.App.4th at p. 42.) Yet, had the attorney done so, there would have been no need to have liberally construed the notice of appeal.

In sum, the *Lumbermens* and *Calhoun* Courts each declined to exercise jurisdiction over the appeal of an order imposing sanctions against an attorney whose name was omitted from the notice of

appeal. In doing so, those courts failed to invoke the doctrine of liberal construction of the notice of appeal, apply *any* legal standard[6] under which to analyze whether liberal construction of the notice of appeal would be appropriate, and ultimately contravened California's "strong public policy in favor of hearing appeals on the merits." (*Moyal v. Lanphear*, *supra*, 208 Cal.App.3d at p. 497; *In re Parker* (1968) 68 Cal.2d 756, 760 ["The policy of appellate courts (should be) to hear appeals upon the merits and to avoid, if possible, all forfeiture of substantial rights upon technical grounds"], internal citations omitted; *Critzer v. Enos*, *supra*, 187 Cal.App.4th at p. 1249 ["[I]t is and has been the law of this state that notices of appeal are to be liberally construed so as to protect the right of appeal . . . ."].) Consequently, this Court must not deem *Lumbermens* or *Calhoun* as instructive in rendering its decision on the instant matter.

CONCLUSION

The Court of Appeal's decision in *K.J., a Minor, by her Guardian Ad Litem, Erick Jimenez v. LAUSD*, Case No. B269864 diverges from settled law that a notice of appeal must be liberally construed. Moreover, in doing so, the Court of Appeal perpetuates the inconsistent application of the doctrine of liberal construction while lending credence to prior opinions the run afoul of California's strong public policy that favors hearing appeals on their merits. For the

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[6] The focal point of a reviewing court's analysis rests on whether it could be determined "what appellant was trying to appeal from, and [whether] the respondent could not possibly have been misled or prejudiced." (*Critzer v. Enos*, *supra*, 187 Cal.App.4th at p. 1249; see *Chung Sing*, *supra*, 178 Cal. 261.)