

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of TIMOTHY and
ELENA GROSS.

TIMOTHY GROSS,

Respondent,

v.

ELENA GROSS,

Appellant.

E073693

(Super.Ct.No. IND098669)

OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge.

Affirmed.

Elena Gross, in pro. per., for Appellant.

No appearance for Respondent.

In August 2010, appellant Elena Gross was declared a vexatious litigant (Code Civ. Proc.,¹ § 391) in the trial court, based on her conduct during extremely contentious proceedings for the dissolution of her marriage to Timothy Gross.² Elena challenges the court’s order reaffirming the legal determination, which requires her to obtain permission from the presiding judge before filing any new litigation or motions in propria persona. We affirm.

I. PROCEDURAL BACKGROUND AND FACTS³

In October 2009, Timothy petitioned for the dissolution of his marriage to Elena. On April 23, 2010, he moved for an order declaring her a vexatious litigant. On August 9, 2010, the motion was granted. The trial court “found that Elena filed three petitions and one amended petition for restraining orders between October 2009 and February 2010; nine motions involving modification of child custody orders, some of them within days after the denial of the previous motion, between November 2009 and

¹ All statutory citations herein are to the Code of Civil Procedure.

² Timothy did not file a respondent’s brief. As is customary in family law appeals, we will refer to the parties by their first names, solely for convenience and clarity. No disrespect is intended.

³ On the court’s own motion, we take judicial notice of our prior unpublished opinions in *In re Marriage of Gross* (Dec. 20, 2011, E051037) [nonpub. opn.] (*Gross I, supra*, E051037), *In re Marriage of Gross* (Mar. 7, 2017, E063790) [nonpub. opn.] (*Gross II, supra*, E063790), and our order in (*In re Marriage of Gross* (Nov. 9, 2015, E064436) (*Gross III, supra*, E064436). (Evid. Code, § 452, subd. (d); Cal. Rules of Court, rule 8.1115(b)(1).) “It is well accepted that when courts take judicial notice of the existence of court documents, the legal effect of the results reached in orders and judgments may be established.” (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 185.)

June 2010; and four motions to disqualify the commissioner to whom the case was assigned, between November 2009 and April 2010. All of these petitions and motions were denied. The court found that the multiplicity of filings, many of them seeking to relitigate the same issues or facts, was a sufficient basis for declaring Elena a vexatious litigant.” (*Gross I, supra*, E051037.)

On or about September 3, 2019, Elena applied to vacate the prefiling order and remove her name from the Judicial Council’s list of vexatious litigants. She claimed that (1) she was “never the plaintiff in case IND 098669 and the family law motions that were the basis of the prefiling order . . . are over 7 years old and do not constitute 5 separate civil complaints,” (2) she has “not been involved in any other lawsuits as plaintiff in the last five years except for a case against [her] ex-husband which [she] won . . . ,” (3) “[o]ther cases have never been included as any basis for the Prefiling filing order with Judge Asberry’s order attached in case IN[D] 098669,” (4) “the circumstances under which the order was based do not apply any longer as the family law motions that were . . . the basis for the order . . . were never finally determined with a custody judgment on a mandatory FL 180 form,” (5) “a material change of circumstances exist[s],” (6) the “custody proceedings . . . continue[] with post judgment modification orders,” (7) she has “not initiated any other proceedings o[r] any [vexatious litigant status] motions in the last seven years,” and (8) “a divorce judgment was filed . . . on 4/1/2014 with a final dissolution . . . which is not a final custody judgment as the custody orders of 4/8/2015 are still subject to modification.” Finally, Elena claimed, “I do not

spend my life suing people.” On September 6, 2019, Elena’s application was denied. She has timely appealed.

II. DISCUSSION

A. *Applicable Principles of Law and Standard of Review.*

The vexatious litigant statutes “are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants. [Citation.] Sections 391 to 391.6 were enacted in 1963, while section 391.7, the section at issue here, was added in 1990.” (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169.) Relevant here, a vexatious litigant is one who, “[a]fter a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.” (§ 391, subd. (b)(2).)

“In 1990, the Legislature enacted section 391.7 to provide the courts with an additional means to counter misuse of the system by vexatious litigants. Section 391.7 ‘operates beyond the pending case’ and authorizes a court to enter a ‘prefiling order’ that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge.” (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 221 (*Bravo*)). “This prefiling requirement ‘does not deny the

vexatious litigant access to the courts, but operates solely to preclude the initiation of meritless lawsuits and their attendant expenditures of time and costs.” (*In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 618.) “For purposes of the vexatious litigant statutes in general, the term “[l]itigation” means ‘any civil action or proceeding, commenced, maintained or pending in any state or federal court.’ [Citation.] The statute governing prefiling orders, however, provides an additional definition of the term: for purposes of section 391.7, “litigation” includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.” (*In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1345-1346.)

“Section 391.8, enacted in 2011, allows a vexatious litigant subject to a prefiling order to apply to vacate the prefiling order and remove his or her name from the Judicial Council’s list of vexatious litigants. [Citations.] The court may grant the application ‘upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.’” (*In re Marriage of Rifkin & Carty, supra*, 234 Cal.App.4th at p. 1346.)

A prefiling order pursuant to section 391.7 is an injunction. (*Lockett v. Panos* (2008) 161 Cal.App.4th 77, 85.) Thus, the decision as to whether to grant Elena’s motion to vacate the prefiling order rested in the trial court’s sound discretion, and we review that determination for an abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 849-850 [an order ““refusing to dissolve a permanent or preliminary injunction rests in the sound discretion of the trial court upon a consideration of all the particular

circumstances of each individual case” and ‘will not be modified or dissolved on appeal except for an abuse of discretion’”].)

B. Analysis.

On appeal, Elena challenges the denial of her application, contending the order designating her to be a vexatious litigant is “over 10 years old,” “the circumstances under which [it] was based do not apply any longer as the family law motions that were used as the basis for the custody order are over seven years old,” and she “has not filed any new civil case in the last 10 years.” Thus, she argues the trial court was presented with a material change of circumstance. Not so.

Although Elena claimed that her designation was based solely on her actions regarding the custody order that was issued more than seven years ago, the August 9, 2010 order states otherwise. We note that in this court alone, Elena has filed or attempted to file more than 50 matters since she was designated a vexatious litigant in August 2010 (*Gross III, supra*, E064436), and the matters are not limited to the custody order that was issued more than seven years ago. Section 391.8, subdivision (c), explicitly provides that relief may be granted only if the vexatious litigant presents an application with “a showing of a material change in the facts upon which the order was granted *and* that the ends of justice would be served by vacating the order.” (Italics added.) These two requirements in section 391.8, subdivision (c), are conjunctive; both must be addressed and satisfied.

Elena’s application below alleged, *inter alia*, that she has “not initiated any other proceedings o[r] any [vexatious litigant status] motions in the last seven years,” and cases

she has been a party to have not involved the custody issue that formed the basis for her vexatious litigant status. However, she admits the “custody proceedings . . . continue[] with post judgment modification orders,” and she did file a motion in this case “a year and a half” ago. These admissions demonstrate the ongoing need to maintain the order. Also, while her designation as a vexatious litigant was derived from her actions regarding the custody issue, it was not limited to that issue. The trial court was therefore justified in impliedly finding that Elena had not made the required showing under the statute that there was “a material change in the facts upon which the [prefiling] order was granted.” (§ 391.8, subd. (c); cf. *Bravo, supra*, 99 Cal.App.4th at p. 219 [appellate court implies findings to support the trial court’s ruling declaring party a vexatious litigant].)

As to the second conjunctive requirement of the statute, Elena’s application did not address it. (§ 391.8, subd. (c).) The trial court was therefore justified in impliedly finding that she failed to show that “the ends of justice would be served” if the prefiling order were vacated. (*Ibid.*; cf. *Bravo, supra*, 99 Cal.App.4th at p. 219.)

Because Elena failed to satisfy either of the two prongs necessary for relief from the prefiling order, we conclude the trial court did not abuse its discretion in denying her application.

III. DISPOSITION

The September 6, 2019 order denying Elena Gross's application to vacate the trial court's prior prefiling order and to remove her from the Judicial Council's vexatious litigant list is affirmed. No costs on appeal are awarded.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.