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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MATTHEW SIKORSKI,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Appellants.

B264340

(Los Angeles County
Super. Ct. No. BS145770)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Dismissed.

Silver, Hadden, Silver & Levine; Rains Lucia Stern St. Phalle & Silver, Jacob A. Kalinski and Brian P. Ross for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Carlos De La Guerra, Managing Assistant City Attorney, Bruce Monroe and Kjehl T. Johansen, Deputy City Attorneys, for Defendants and Appellants.

Matthew Sikorski (Officer Sikorski) is employed by the Los Angeles Police Department (Department) as a police officer. The Department's Chief of Police suspended Officer Sikorski for ten days after he admitted making a discourteous comment in the presence of a woman who called the police for help. Officer Sikorski administratively appealed the suspension, and a hearing officer recommended reducing the suspension to one day. The Chief of Police kept the ten-day suspension in place, and Officer Sikorski thereafter filed a petition for writ of mandate to overturn the Chief's decision.

The trial court entered a "Judgment on Petition for Peremptory Writ of Mandate" finding that the hearing officer had improperly placed the burden of proof on Officer Sikorski rather than the Department, and that the Chief of Police did not sufficiently set forth evidence and reasoning justifying a ten-day suspension. The trial court's judgment remanded the matter to the hearing officer to prepare a new recommended decision applying the correct burden of proof (which will require the Chief of Police to redetermine the penalty to be imposed following the hearing officer's new decision).

Both the City of Los Angeles and Officer Sikorski appealed from the trial court's decision—the City arguing for reversal to maintain the ten-day suspension, and Officer Sikorski contending a ten-day suspension is excessive as a matter of law. We invited the parties to submit supplemental briefs addressing whether an appeal may properly be taken from the trial court's judgment. Both parties now agree their appeals should be dismissed because the judgment is not appealable and the case presents no circumstances that would justify treating their appeals as petitions for a writ of mandate. We agree and therefore dismiss

the appeals. (See, e.g., *Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1139-1140 [“A remand order to an administrative body is not appealable”]; see also *Olson v. Cory* (1983) 35 Cal.3d 390, 401 [court should not exercise power to treat purported appeal as a petition for writ of mandate except under “unusual circumstances”].)

DISPOSITION

The appeal taken by the City of Los Angeles and the cross-appeal taken by Officer Sikorski are dismissed. The parties shall bear their own costs.

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.*

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