Filed 8/17/17 Manochehri v. Frankel CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FERESHTEH MANOCHEHRI, Plaintiff and Appellant, v. CARLEE FRANKEL, Respondent.	B275307 (Los Angeles County Super. Ct. No. YQ023250)

APPEAL from an order of the Superior Court of Los Angeles County, John A. Slawson, Judge. Affirmed.

Fereshteh Manochehri, in pro. per., for Plaintiff and Appellant.

No appearance for Respondent.

Appellant Fereshteh Manochehri,[1] appearing in propria persona, challenges an order declaring her a vexatious litigant and barring her from filing future litigation in propria persona without permission of the court. (Code Civ. Proc., § 391.7, subd. (a).)[2] Appellant argues that her conduct in repeatedly filing cases against her daughter-in-law and daughter-in-law's family members did not rise to the level of vexatiousness. She also contends that both the motion to declare her a vexatious litigant and the court's review were deficient. We affirm.

BACKGROUND

Appellant's adult son married respondent Carlee Frankel in October 2013. Appellant disapproves of the union and asserts that Frankel and Frankel's family have barred appellant from seeing her son. Appellant has turned to the courts, both before and after her son's wedding, in an attempt to re-establish a relationship with him. On our own motion, we take judicial notice of the trial court's dockets in the nine[3] cases identified in

---

[1] The record contains two different spellings of appellant's first name. We use the spelling appellant uses in her brief.

[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[3] Appellant accurately asserts that she filed only seven of the identified cases. Two of the filings identified pertain to a single case—a conservatorship petition and an appeal of its denial—filed by appellant's husband. Appellant's husband filed a petition to obtain a conservatorship over appellant's son prior to his wedding, in August 2013. (L.A. Sup. Ct. Case No. BP144498.) The trial court denied the petition, and appellant's husband appealed (Case No. B251865). That appeal was pending in Division One of this court at the time the motion to declare appellant a vexatious litigant was filed. We take judicial notice of the fact that our colleagues have since affirmed the trial court's

the appellate record as cases appellant initiated in pursuit of this goal. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

Appellant filed her first complaint against Frankel on September 27, 2013, approximately one week before her son's October 5, 2013 wedding. (L.A. Sup. Ct. Case No. LC100850.) The complaint was voided shortly thereafter because appellant did not pay the filing fee after her request for a fee waiver was denied.

Appellant filed another complaint against Frankel on October 2, 2013, three days before her son's wedding. (L.A. Sup. Ct. Case No. YC069329.) According to the amended motion to declare appellant a vexatious litigant ("the amended motion"), appellant alleged that Frankel and her family "brain washed" her son and sought injunctive, declaratory, and monetary relief. Appellant voluntarily dismissed the action six months later, in April 2014, after the trial court sustained at least one demurrer with leave to amend.

On March 24, 2014, appellant sought a restraining order against Frankel. (L.A. Sup. Ct. Case No. LQ016719.) The trial court denied appellant's request on April 14, 2014.

On March 10, 2015, appellant's son obtained a restraining order against her. (L.A. Sup. Ct. Case No. LQ018193.)

Appellant resumed her litigation efforts against Frankel a few months later. On August 7, 2015, she filed three separate petitions for restraining orders against three members of

---

decision denying the conservatorship petition. (Evid. Code, §§ 452, subds. (a), (d), 459, subd. (a).) We note, however, that Frankel's attorney stated in his declaration that appellant simply "uses her husband's name" and "is the one who appears, files the papers and argues the cases" putatively pursued by him.

Frankel's family. (L.A. Sup. Ct. Case Nos. YS027584, YS027585, YS027586.) The trial court—the same trial court that presided over the instant case—heard evidence on the first petition only. It denied that petition on August 28, 2015. According to the amended motion, appellant "dismissed her remaining petitions set for that date against" Frankel's two other family members. According to the dockets, the trial court denied the petitions.

Appellant filed the present case against Frankel on August 11, 2015, seeking a restraining order against her. (L.A. Sup. Ct. Case No. YQ023250.) Frankel responded on August 27, 2015 by filing a motion seeking to declare appellant a vexatious litigant, accompanied by a request that the trial court take judicial notice of appellant's recent litigation. According to a declaration by Frankel's attorney, appellant "telephoned [him] on August 28, 2015 to ensure that [he] and Carlee Frankel would be present in court on September 1, 2015 for a hearing. She stated that she would never voluntarily dismiss her petition. On September 1, 2015, when the matter was called, [appellant] dismissed her petition without explanation." Frankel and her attorney had to travel 1.5 hours each way to the courthouse for the aborted hearing. According to the amended motion, "the Court suggested that this Amended Motion be filed to reflect the most recent hearings" involving Frankel and her family members.

Frankel filed the amended motion on September 16, 2015. It was accompanied by a request for judicial notice of appellant's litigation history and declarations by Frankel, her attorney, and appellant's son. Appellant obtained counsel and filed an opposition to the amended motion on November 2, 2015. The matter was submitted on November 24, 2015. The record does not contain a reporter's transcript documenting the hearing.

The trial court granted the motion and signed and filed a prefiling order on December 3, 2015. Such orders are appealable under section 904.1, subdivision (a)(6) (*Luckett v. Panos* (2008) 161 Cal.App.4th 77, 84-85, 90), and appellant timely filed her notice of appeal on May 27, 2016.

DISCUSSION

The vexatious litigation statutes, sections 391 through 391.7, "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." (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169 (*Shalant*); *In re Kinney* (2011) 201 Cal.App.4th 951, 957-958.) Section 391, subdivision (b) provides that a "vexatious litigant" is "a person who does any of the following," and then lists, in four subdivisions, several different types of conduct that rise to the level of vexatiousness. The definitions in section 391, subdivision (b)(2) and (b)(3) are most relevant here. Subdivision (b)(2) states that a person may be deemed a vexatious litigant if he or she, "After 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." Subdivision (b)(3) provides that a litigant may be deemed vexatious if he or she, "[i]n any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or

engages in other tactics that are frivolous or solely intended to cause delay."

Section 391.7 authorizes the court to enter, on its own or a party's motion, a prefiling order that prohibits someone who meets the definition of a vexatious litigant from filing any new litigation in propria persona absent the permission of the presiding judge. (*Shalant*, *supra*, at p. 1170.) The Judicial Council maintains a registry of vexatious litigants subject to prefiling orders. (§ 391.7, subd. (f).) Court clerks receive copies of the registry and "are directed not to file litigation from a vexatious litigant subject to a prefiling order without the presiding judge's order permitting the filing. If the clerk mistakenly does file the action, any party may seek dismissal through a notice that the plaintiff is subject to a prefiling order." (*Shalant*, *supra*, 51 Cal.4th at p. 1170.)

"The trial court exercises its discretion in determining whether a person is a vexatious litigant. Review of the order is accordingly limited and the court of appeal will uphold the ruling if it is supported by substantial evidence. Because the trial court is best suited to receive evidence and hold hearings on the question of a party's vexatiousness, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment." (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 636; see also *In re Marriage of Rifkin and Carty* (2015) 234 Cal.App.4th 1339, 1346.)

Appellant contends this presumption of correctness is overcome because the trial court overstated the extent of her litigiousness. First, she asserts, "she has been in no litigation whatsoever during 95% of her life" and therefore "does not deserve the label vexatious litigant." The relative portion of one's

life spent in court is not determinative of whether he or she meets the statutory definition of a vexatious litigant. The statute is concerned not with the length of time the allegedly vexatious litigant spent on his or litigation, but rather with the time (and other) costs borne by targeted defendants and the court system as a whole. That is why appellant's second argument, that she is not vexatious because her cases were "of short duration" and did not last "more than a few weeks," is equally unavailing. Though appellant may view her suits as "inconsequential," they undoubtedly had a real effect on the defendants, who hired counsel and appeared in court, and on the court system, which dedicated resources to processing the cases. Indeed, appellant's son and Frankel both submitted declarations attesting to the adverse effects the litigation has had on them. Moreover, appellant's characterization of her cases as lasting only "a few weeks" is inaccurate; one of the cases against Frankel lasted approximately six months and involved at least one substantive filing—a demurrer—by Frankel.

Appellant argues that her October 2013 case in particular was "inconsequential" because she dismissed it without prejudice. This contention is not persuasive. "An action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system, albeit less of a burden than if the matter had proceeded to trial. A party who repeatedly files baseless actions only to dismiss them is no less vexatious than the party who follows the actions through to completion. The difference is one of degree, not kind." (*Tokerud v. CapitolBank Sacramento* (1995) 38 Cal.App.4th 775, 779.) Appellant further asserts that "[d]ismissal in and of itself means nothing," but dismissal is not

examined in a vacuum. The trial court was permitted to take into account the broader context surrounding any dismissal of appellant's cases against Frankel and her family members, including appellant's non-legal aim of repairing a damaged familial relationship, the costs borne by Frankel and her family members, and the repetitive nature of the litigation.

Appellant next claims the amended motion did not provide the trial court with "ANY detail" about her litigation activities, or the dockets associated therewith, and, relatedly, that the trial court did not examine any of her cases "to see if it supports a finding of vexatious litigation." This contention is not supported by the record. The record reflects that the amended motion discussed appellant's litigation in detail, and was accompanied by a request for judicial notice of appellant's litigation activities. Appellant has not demonstrated that the trial court, which presided over several of appellant's cases, failed to properly review or consider the filings in this case.

Appellant also contends that the amended motion and the trial court improperly attributed nine case filings to her, when two were filed by her husband and three—the petitions for restraining orders against Frankel's family members—"were really just one case, which is why they have successive numbers." Although appellant is correct that she did not file the petition for conservatorship or the appeal of its denial, she has not demonstrated that its inclusion in the amended motion, or any failure to count her three cases against the Frankel family as one, constitutes reversible error.

Only subdivision (b)(1) of section 391 requires the trial court to tabulate the number of in propria persona litigations pursued by a litigant, and the record indicates neither that the

trial court relied on that subdivision, nor whether or how the trial court counted the cases filed by appellant. Absent evidence to the contrary, we presume that any tabulation the trial court performed was done properly. "It is . . . a fundamental rule of appellate review that an appealed judgment or order is presumed correct. [Citation.] '"All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . ." [Citations.]' [Citation.] To overcome this presumption, the appellant must provide an adequate appellate record demonstrating error. [Citation.] '"A necessary corollary to the rule [is] that a record is inadequate . . . if the appellant predicates error only on the part of the record he [or she] provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." [Citation.]' [Citation.] Where the appellant fails to provide an adequate record of the challenged proceedings, we must presume that the appealed judgment or order is correct, and on that basis, affirm." (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643-644.)

The record here also demonstrates that the trial court was well within its discretion to deem appellant vexatious under section 391, subdivision (b)(2) or (b)(3), even if the conservatorship proceedings are not considered and the three restraining order actions are viewed as one case. Section 391, subdivision (b)(2) allows a trial court to declare a litigant vexatious if he or she "repeatedly relitigates or attempts to relitigate, in propria persona . . . the . . . controversy, or any of the issues of fact or law, determined or concluded by the final

determination against the same defendant . . . as to whom the litigation was finally determined." The record shows—and appellant does not dispute—that appellant filed a complaint against Frankel and then voluntarily dismissed it six months later; unsuccessfully sought a restraining order against Frankel; then again attempted to obtain a restraining order against Frankel despite Frankel's attestation that she had no contact or relationship with appellant. Appellant acknowledges that all of these actions were motivated by a single controversy, her son's marriage to Frankel and her desire to see him. The trial court reasonably concluded from this evidence that appellant was attempting to relitigate the same issues against Frankel. The record also demonstrates that appellant, "while acting in propria persona, repeatedly files . . . pleadings . . . [and] engages in other tactics that are frivolous or solely intended to cause unnecessary delay," such as filing unsupported petitions for restraining orders against Frankel and her family members and dismissing these actions only after her opponents appeared for distant hearings. (§ 391, subd. (b)(3).)

DISPOSITION

The order of the trial court is affirmed. Because respondent did not appear on appeal, no party shall recover costs. (Cal. Rules of Court, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.