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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

RALPH T. FERGUSON, Plaintiff and Appellant, v. CAMARILLO HEALTH CARE DISTRICT, Defendant and Respondent.	2d Civil No. B281856 (Super. Ct. No. 56-2016-00478549-CU-BC-VTA) (Ventura County)

Clients are entitled by statute to arbitrate fee disputes, even if the attorney-client agreement does not provide for it. (Bus. & Prof. Code, § 6200 et seq.; *Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557, 565.) Calling it an "unproductive waste of time," attorney Ralph T. Ferguson did not participate in mandatory arbitration of a fee dispute with his client, Camarillo Health Care District (CHCD). The arbitrators ruled in favor of CHCD.

The trial court ruled that Ferguson forfeited his right to trial de novo by willfully failing to appear for arbitration.

(Bus. & Prof. Code, § 6204, subd. (a).) It entered judgment on CHCD's award and denied Ferguson relief for his claimed mistake, inadvertence, surprise or excusable neglect. (Code Civ. Proc., § 473, subd. (b).)[1] Ferguson did not appeal the judgment on the award or the denial of relief from the judgment. Instead, he sued CHCD for damages in a separate lawsuit.

Ferguson contends the trial court erred by (1) sustaining a demurrer to his complaint without leave to amend; (2) denying his motion to transfer venue; (3) finding he willfully failed to appear for arbitration; and (4) denying relief from the judgment. We dismiss for lack of jurisdiction his appeal from the judgment on the arbitration award and the order denying relief from that judgment. His surviving claims–arising from the dismissal of his lawsuit against CHCD—do not withstand scrutiny. We affirm the trial court's dismissal of that lawsuit.

FACTS AND PROCEDURAL HISTORY

CHCD provides health services in Ventura County. Ferguson was CHCD's outside counsel from 2012 to 2014. In 2015, CHCD asked him to explain why his legal fees totaled $383,930 in less than three years, an exceptional amount given the agency's modest budget. Ferguson appeared at a CHCD board meeting to discuss his fees. He declined to give CHCD its legal files, asserting that they are privileged, or too heavy to lift, or the subject of a ransomware attack on his computer.

CHCD initiated arbitration with Ventura County Bar Association (VCBA) seeking a partial refund of fees. Ferguson asked the State Bar to assume jurisdiction, claiming he would be denied a fair hearing in Ventura and deeming arbitration "an

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[1] Unlabeled statutory references are to the Code of Civil Procedure.

unfair and unproductive waste of time." The State Bar denied his request.

Ferguson asked VCBA to "decline all further involvement" with the "dishonest" arbitration. At his request, the arbitrators continued the matter for two months. During the continuance, Ferguson repeatedly challenged the arbitration process. He wrote to VCBA that "any form of resolution—other than a court trial or jury trial in a neutral county—[is] a complete waste of time." He accused VCBA of bias and demanded that it "cancel this legally improper arbitration," adding, "I cannot spend more valuable career time addressing fabricated complaints about admittedly outstanding work." As the hearing date approached, Ferguson twice more demanded that VCBA cancel the arbitration.

Four days before the hearing, Ferguson wrote that he did not intend to drive 400 miles to Camarillo "to attend a non-binding arbitration." CHCD opposed his request to participate by telephone, noting that he could not be cross-examined without seeing exhibits presented at the hearing. The arbitrators denied his request to teleconference.

The arbitration went forward on January 8, 2016. Ferguson did not appear, but sent his resume as his arbitration brief. He tried to call, but the hearing room did not have a telephone. After considering testimony and billing documents, the panel found that Ferguson billed $360,234, but the value of his work was $187,824. It awarded CHCD $172,410.

Ferguson sued CHCD for breach of contract and requested trial de novo. CHCD asked the trial court to confirm and enter judgment on the award, arguing that Ferguson is not

entitled to trial because he willfully failed to appear at the arbitration. Ferguson did not submit written opposition.

In granting CHCD's motion, the court wrote, "[t]he record is clear that [Ferguson] made numerous efforts to thwart and not participate in the arbitration of the fee dispute" then failed to appear after the panel denied his request to participate by phone. The court concluded that Ferguson's nonappearance was willful: he engaged in dilatory tactics, lacked good faith toward the arbitration process, and presented no evidence on the issue of willfulness.[2] On July 29, 2016, the court entered judgment on the award.

Ferguson filed a motion for relief from judgment, but did not serve it on CHCD. The court denied the motion on procedural grounds. He submitted a second motion for relief, arguing that VCBA blocked his participation in the arbitration hearing and he was too ill to oppose CHCD's request for judgment on the award.

The court denied Ferguson relief because he did not show mistake, inadvertence, surprise or excusable neglect. It deemed his claim of illness "not credible," finding that "Ferguson has been disdainful and neglectful about both [the arbitration and court] proceedings, and the claim of medical issues is an 'after the fact' excuse in an effort to remedy his lack of diligence." It continued, "Ferguson never participated in a substantive way in his arbitration proceeding and never submitted written

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[2] *After* the court hearing, Ferguson submitted opposition to CHCD's motion. He did not explain his absence at arbitration, saying only that he "became unavoidably involved in a local political struggle . . . ." He did not state that a medical condition prevented his appearance.

opposition to the motion to enforce the arbitration award." The court concluded, "In the end, [Ferguson] has only himself to blame if he believes his dispute with CHCD has not been decided on the merits."

In his lawsuit against CHCD, Ferguson alleged that he was retained under an oral contract and his invoices were approved by CHCD's chief executive and board. CHCD violated the covenant of good faith and fair dealing by asserting false claims of excessive legal fees and by examining the agency-owned computer and cell phone of its chief executive, thereby obtaining "private details of the Plaintiff's personal life" because the two had a romantic relationship. A second claim states that CHCD "agreed to pay and did pay the Plaintiff the reasonable value of [his] services." Because CHCD reevaluated the value of those services, Ferguson alleges that his services are now worth "in excess of the amounts previously paid."

CHCD demurred, arguing that it did not violate an implied duty of good faith by examining its agency-owned cell phone and computer. Ferguson's invoices were paid; he cannot claim that CHCD owes him more money than he billed and collected. CHCD argued that its debt to Ferguson is res judicata due to the arbitration judgment.

The court granted CHCD's demurrer without leave to amend. It wrote, "[a] client always has the right to investigate and question the fees charged by its attorney, and in no context can such a right be said to be a breach of the implied covenant of good faith and fair dealings." It rejected Ferguson's claim for quantum meruit because the arbitration award is final and further fee litigation is barred by res judicata. The court dismissed the complaint.

DISCUSSION

1. Ruling on the Demurrer

Ferguson appeals from the dismissal of his complaint after demurrers were sustained without leave to amend. Review is de novo. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) He offers scant argument on the ruling, contending only that CHCD violated the covenant of good faith and fair dealing by pursuing "an unsubstantiated and essentially fabricated [arbitration] claim for the reimbursement of attorney's fees—for completed public legal and chief executive consulting services provided years in the past . . . ."

Clients have a right to arbitrate legal fee disputes. (Bus. & Prof. Code, § 6201, subd. (a) [clients must be notified of their "right to arbitration"].) Participation is "mandatory" for an attorney. (*Id.*, § 6200, subd. (c).) CHCD's exercise of its statutory right to arbitrate was not a breach of the implied covenant of good faith.

If Ferguson believed that CHCD's claim seeking a partial refund of attorney fees was "unsubstantiated and essentially fabricated," he had the right to appear at the arbitration and justify his fees. Instead, he called the arbitration a waste of time, did not appear, and the court determined that his nonparticipation was willful. The judgment entered on the arbitration award is res judicata as to Ferguson's lawsuit alleging that CHCD's claim was false and unsubstantiated.

2. Denial of Ferguson's Motion to Transfer

After the court entered judgment on the arbitration award, Ferguson sought to transfer his lawsuit against CHCD out of Ventura County, citing section 394. The court denied the motion. The intermediate order was reviewable on petition for

writ of mandate (*Westinghouse Electric Corp. v. Superior Court* (1976) 17 Cal.3d 259, 264) or, as here, on appeal after the court dismissed Ferguson's lawsuit. Review is de novo. (*Kennedy/Jenks Consultants v. Superior Court* (2000) 80 Cal.App.4th 948, 959-960.)

Section 394, subdivision (a) states that an action brought *by* a local agency may be transferred to a place where the agency is not situated; however, an action *against* a local agency is triable where the agency is situated. Here, Ferguson filed suit *against* CHCD in Ventura County Superior Court. CHCD may defend against the lawsuit in Ventura County.

Ferguson relies on procedural statutes (§§ 307, 308) describing a "plaintiff" in a "civil action," but they do not apply to CHCD. Ferguson filed a civil action against CHCD; he is the plaintiff. No transfer to a different county was required.

3. Jurisdiction to Review Claims Arising From the 2016 Judgment

Ferguson's brief covers more rulings than are specified in his notice of appeal. His "Discussion of Legal Issues" addresses orders relating to his willful failure to appear at arbitration and the denial of his request for relief from the July 2016 judgment.

We asked the parties to brief the issue of our jurisdiction to review the 2016 judgment and the order denying relief from the judgment. (Gov. Code, § 68081.) Once the deadline for filing a notice of appeal expires, we have "no power to entertain the appeal." (*Van Beurden Ins. Servs. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) If an appeal is untimely, the reviewing court has "no discretion but

must dismiss the appeal of its own motion[,] even if no objection is made." (*Estate of Hanley* (1943) 23 Cal.2d 120, 123.)

The 2016 "Judgment Following Confirmation of Arbitration Award" was directly appealable. (§ 1294, subd. (d); *Guseinov v. Burns* (2006) 145 Cal.App.4th 944, 954.) Ferguson did not appeal the judgment. However, he sought relief from it.

A motion for relief extends the time in which to appeal a judgment until 30 days after the court clerk serves the ruling denying the motion. (Cal. Rules of Court, rule 8.108(c)(1); *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 108.) The clerk served the order denying Ferguson's motion on January 9, 2017. The time to appeal the judgment expired February 8, 2017. The appeal was filed April 6, 2017.

Ferguson contests the court's finding that he "willfully" failed to appear at the arbitration hearing. This finding preceded the judgment and is subsumed within it. Absent a finding of willfulness, judgment would not have been entered on the award and Ferguson would have had a trial. (Bus. & Prof. Code, § 6204, subd. (a).) Review of the willfulness finding was forfeited by his failure to timely appeal the judgment.

A motion for relief is a direct attack upon the judgment. (*McCartney v. Superior Court* (1990) 223 Cal.App.3d 1334, 1339.) Ferguson had 60 days to appeal after the clerk served the order denying his motion. (Cal. Rules of Court, rule 8.104(a)(1)(A).) The 60 days expired March 10, 2017, nearly a month before Ferguson filed his notice of appeal.

Ferguson contends that the judgment on the arbitration award was intermediate and did not require an appeal. He is mistaken. A hearing to confirm an arbitration award is a "special proceeding" created by statute. (§ 23;

Paramount Unified School Dist. v. Teachers Assn. of Paramount (1994) 26 Cal.App.4th 1371, 1387.) "A judgment in a special proceeding is *the final determination of the rights of the parties* therein." (§ 1064, italics added.) The law provides for immediate appeal of a judgment entered on an arbitration award. (§ 1294, subd. (d).)

"'A party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order. [Citations.]' [Citation.]" (*Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 509.) Arbitration judgments are "final and appealable even though more litigation is contemplated in a separate action." (*Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 803.) We lack jurisdiction to consider issues arising from a judgment that was not appealed.

DISPOSITION

We dismiss Ferguson's appeals from the Judgment Following Confirmation of Arbitration Award, the factual findings underlying that judgment, and the order denying relief from the judgment. We affirm the dismissal of Ferguson's lawsuit. Camarillo Health Care District is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J. YEGAN, J.

Rocky J. Baio, Judge

Superior Court County of Ventura

Ralph T. Ferguson, in pro. per., for Plaintiff and Appellant.

Ferguson Case Orr Paterson, Michael A. Velthoen and Wendy C. Lascher, for Defendant and Respondent.