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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

YVETTE MICHELLE ADAMS, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent, WEDGEWOOD COMMUNITY FUND II, LLC, Defendant and Real Party in Interest.	B268901 (Los Angeles County Super. Ct. No. PC053507)

ORIGINAL PROCEEDINGS; petition for writ of mandate. Stephen P. Pfahler, Judge. Petition denied.

Yvette Michelle Adams, in pro. per.; and Grenville Thomas Pridham for Petitioner.

No appearance for Respondent.

Dinsmore & Sandelmann, Frank Sandelmann and Brett A. Stroud for Defendant and Real Party in Interest.

Plaintiff Yvette Michelle Adams, acting as a self-represented litigant, filed a motion to set aside a voluntary dismissal of an action filed by her former attorney. Adams's motion for relief from her voluntary dismissal invoked Code of Civil Procedure section 473, subdivision (b),[1] and the trial court's inherent equitable powers. The trial court denied Adams's motion. We affirm.

FACTS

In August 2012, Adams, as a self-represented litigant, filed a complaint against several financial institutions. The allegations in the pleading were uncertain, but appeared to involve a real estate loan.

In March 2013, Adams filed a first amended complaint alleging claims against a number of financial institutions, and adding defendant Wedgewood Community Fund II, LLC (Wedgewood) as a party to her action. The allegations in Adams's first amended complaint were a bit clearer than those in her original complaint, and included language concerning "loan modification discussions." Adams alleged that she was "damaged in that her loan was refinanced to terms she did not agree to." Further, Adams alleged that there had been a "wrongful foreclosure on the property," and that "the defendants sold the property to Wedgewood." Among her other prayers for relief, Adams sought "rescission of the Trustee's sale."

In June 2013, Wedgewood filed a demurrer to Adams's first amended complaint.

In September 2013, Adams filed a second amended complaint, alleging numerous causes of action against several

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[1] Hereafter section 473(b).

defendants related to a loan and foreclosure. With regard to Wedgewood, the second amended complaint named the company in the ninth and tenth causes of action for conversion and intentional infliction of emotional distress (IIED). Adams's second amended complaint prayed for damages, but no longer included a prayer for rescission of the trustee's sale.

In October 2013, Wedgewood filed a demurrer to Adams's cause of action for IIED in her second amended complaint.

On December 10, 2013, Adams, through attorney Jay Belshaw, filed a substitution of attorney naming Belshaw as her attorney of record.

On February 10, 2014, the trial court sustained Wedgewood's demurrer to Adams's IIED causes of action in her second amended complaint, without leave to amend. By the same order, the court denied Adams's request for leave to amend her complaint to "tighten up" her cause of action for conversion and to add a claim for negligent conversion of property, without prejudice. The court advised: "If [plaintiff] wants to revise any of her current claims or add any new claims, she must file a properly noticed and supported motion for leave to amend."

On June 25, 2014, Adams, represented by attorney Belshaw, filed a request for dismissal of her entire action. The clerk of the superior court entered a dismissal the same day.

On February 19, 2015, Adams, once again as a self-represented litigant, filed a motion for relief based on section 473(b) and the trial court's inherent equitable powers to set aside her voluntary dismissal of her action. Adams's motion asserted that her attorney, Belshaw, had "convinced and coerced" her through "misrepresentation or fraud" into agreeing to the filing of the request for dismissal of her action. Adams stated that she

had been "under the mistaken belief that [Belshaw] would in fact vigorously pursue her interest and legal rights."

On September 22, 2015, the trial court denied Adams's motion for relief from her voluntary dismissal. The court's order shows it ruled as follows: (1) insofar as Adams sought statutory relief under section 473(b), she had not filed her motion within the prescribed six month period from the entry of her voluntary dismissal; and (2) insofar as Adams sought equitable relief from her dismissal, she failed to make an adequate showing to justify granting her relief. As to the latter, the court noted that, while Adams's motion made a "general allegation" that attorney Belshaw had "somehow misled her regarding the status of her case," she failed to "explain exactly what misrepresentation was made to her."

On December 7, 2015, Adams filed a notice of appeal from the trial court's order denying her motion to set aside her voluntary dismissal.

DISCUSSION

I. Treatment of the Appeal as a Petition for Writ of Mandate

In its respondent's brief, Wedgewood correctly notes that a voluntary dismissal is not an appealable judgment or order. (*Gray v. Superior Court* (1997) 52 Cal.App.4th 165, 170-171.) Further, an order denying a motion to vacate a nonappealable order is not appealable. (*Ibid.*; and see also *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1364-1365 (*Arnaiz*).) The proper procedural mechanism for challenging an order denying a motion for relief from a nonappealable order is a petition for writ of mandate. (*Arnaiz, supra*, 96 Cal.App.4th at p. 1366.)

While recognizing the rules stated above, Wedgewood "urges" our court to exercise our discretionary power to treat Adams's attempted appeal as a petition for writ of mandate (see, e.g., *Olson v. Cory* (1983) 35 Cal.3d 390, 400-401) and to "decide [the issues] on the merits, because dismissal of the appeal would likely result in [Adams] filing a writ petition . . . ." Wedgewood "respectfully submits that treating [Adams's attempted] appeal as a petition for writ of mandamus would save time and judicial resources, as the briefing and record are sufficient for this court to reach a decision on the merits."

We agree with Wedgewood that this is an appropriate case in which to exercise our discretion to treat Adams's appeal from a nonappealable order as a petition for writ of mandate. Accordingly, we do so.

II. The Trial Court did not Abuse its Discretion

Adams contends the trial court erred in denying her motion for section 473(b) relief from her voluntary dismissal. We disagree.

A trial court's order denying a motion for relief under section 473(b) is reviewed under the abuse of discretion standard. (Cf. *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318-1319 (*Anastos*) [default judgment].) Under the abuse of discretion standard, a reviewing court "must not merely substitute its own view as to the proper decision. . . ." (*In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.) Rather, we must decide whether the trial court's decision "exceeded the bounds of reason." (*Anastos, supra*, 118 Cal.App.4th at p. 1319.)

Section 473(b) provides two statutory grounds for granting relief: first, there is mandatory relief based on an attorney's affidavit of fault, and, second, there is discretionary relief based

on a showing that a court action was taken through the mistake, inadvertence, surprise, or excusable neglect of a party. In the present matter, only discretionary relief is at issue.

As noted above, under section 473(b)'s discretionary relief provision, the trial court has statutory power to relieve a party from a dismissal "taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§ 473(b).) Such relief, however, is only available when the motion is brought "within a reasonable time, in no case exceeding six months, after the . . . dismissal. (§ 473(b).) Thus, section 473(b) draws a bright-line rule that a trial court's statutory authority to consider a motion for discretionary relief expires six months after a challenged judicial action is entered. As generally discussed in *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725: "Where . . . [a] motion is made more than six months after entry of default, the motion is not directed to the court's statutory power under section 473 to grant relief for mistake or excusable neglect but rather is directed to the court's inherent equity power under which it may grant relief from a default judgment where there has been extrinsic fraud or mistake." (*Id.* at p. 737.) In Adams's present case, the court entered the voluntary dismissal June 25, 2014, and Adams filed her motion on February 19, 2015, nearly eight months later. The trial court's decision to deny Adams's motion for relief is not erroneous as to the court's statutory authority under section 473(b) because Adams did not file her motion within six months.

Under its general equitable powers, a trial court has authority to grant relief after section 473(b)'s six-month time line has passed upon a showing of "'extrinsic' fraud or mistake." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.) To obtain such

relief, the movant must demonstrate that he or she "act[ed] diligently in making his [or her] motion." (*Id*. at pp. 856-857.) Further, the movant bears the burden of demonstrating the equitable ground for relief. (*Basinger v. Rogers & Wells* (1990) 220 Cal.App.3d 16, 23-24 (*Basinger*).)

Here, we see no evidence in Adams's motion for relief explaining how she acted diligently, or demonstrating extrinsic fraud or mistake justifying relief. First, Adams conceded that she knew the dismissal was filed. Her claim was that her lawyer "coerced" her into agreeing to the filing of the dismissal. Thus, she was on notice immediately that a dismissal had been entered against her will. She points to no efforts between June 2014, when the dismissal was entered, and February 2015, when she filed her motion, to seek relief.

Second, the alleged extrinsic cause of the dismissal is a generalized claim that her attorney made "false or misleading statements" to her. As noted above, in a motion for relief based on a claim of extrinsic cause, the moving party bears the burden of proof on the equitable grounds for the motion. (*Basinger, supra*, 220 Cal.App.3d at pp. 23-24.) Here, as the trial court correctly noted, Adams did not introduce any meaningful evidence of her attorney's specific statements that would support her claim of fraud against the lawyer. When a persuasive showing is not made, a trial acts within its discretion in denying the motion. (*Id*. at p. 24.)[2]

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[2] On our own motion, we take judicial notice that Adams filed a complaint against attorney Belshaw, and that the action ended with entry of a judgment in Belshaw's favor on demurrer. Adams's appeal from the judgment in Belshaw's favor is pending. (*Adams v. Belshaw*, case No. B275742.)

DISPOSITION

The petition is denied. Each party to bear its own costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.