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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TOSH BERMAN,

Plaintiff and Respondent,

v.

DARRICK ANGELONE,

Defendant and Appellant.

B279743

(Los Angeles County
Super. Ct. No. BC509496)

APPEAL from a judgment of the Superior Court of Los Angeles County. Yvette M. Palazuelos, Judge. Dismissed.

Arendsen Cane Molnar, Christian S. Molnar and Averil Andrews, for Plaintiff and Respondent.

Darrick Angelone, in pro. per.; Law Offices of J.T. Fox and J.T. Fox, for Defendant and Appellant.

Respondent Tosh Berman sued appellant Darrick Angelone for defamation following a series of articles in an on-line gossip blog that accused respondent of a number of dishonest and fraudulent acts. Appellant failed to respond to this suit and a default judgment was entered against him. He appeals from this judgment. Recognizing that he failed to file a notice of appeal in a timely manner, appellant argues that the judgment was void at the time it was entered and, therefore, may be challenged at any time pursuant to Code of Civil Procedure section 473, subdivision (d).¹ We find that judgment was neither void on its face nor does any extrinsic evidence establish that it is void. Thus, this appeal is untimely and we have no jurisdiction. Therefore, the appeal is dismissed.

BACKGROUND

Appellant Angelone wrote a series of articles in a popular on-line gossip blog that he operated which were extremely critical of respondent Berman, accusing him of a number of misdeeds. According to the complaint, respondent lost several business opportunities, including one that ended up generating \$2,000,000 per year in profit, when lessors and vendors stopped doing business with him as a result of the offending articles.

On May 23, 2013, respondent filed a complaint alleging that appellant had defamed him in these articles and seeking damages in the designated amount of \$2,500,000 plus costs.

Appellant did not answer this complaint and never appeared in court to contest it. Respondent sought a default

¹ Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

judgment pursuant to section 580 in the amount of \$2,500,000 plus costs, and a default was entered on July 3, 2014.

On January 7, 2015, after the entry of the default but before the entry of judgment, appellant made his first motion to vacate the default, arguing that he had not been served and had not received notice. The trial court denied the motion on November 19, 2015.

Appellant was served with a request for default judgment on September 29, 2015, and this request was filed with the court on November 19, 2015. The trial court entered judgment in the amount of \$2,500,000 in “compensatory” damages and costs of \$1,054.21, on November 19, 2015. Appellant did not appeal that judgment. A Notice of Entry of Judgment was served on appellant on November 23, 2015, and filed by the clerk on November 30, 2015.

Appellant filed a second motion to vacate the default and judgment nearly eleven months later, on September 23, 2016, this time alleging that he had not been served with a statement of damages as required by section 425.11. This motion was denied on November 1, 2016. The trial court found that the judgment was not void for failure to serve a statement of damages and that appellant had demonstrated no prejudice.

A notice of appeal was filed on December 27, 2016, more than one year after the entry of judgment.

DISCUSSION

A notice of appeal in a civil case must be filed within 60 days after the party filing the notice of appeal is served with a “Notice of Entry of Judgment” and that notice is accompanied by proof of service. (Cal. Rules of Court, rule 8.104(a)(1)(B).) This time may be extended if a party makes a motion to vacate the

judgment within 180 days after the entry of judgment. (Cal. Rules of Court, rule 8.108(c)(3).) An appeal may not be taken from the denial of a motion to set aside a default judgment but must be taken from the judgment itself. (*Sanford v. Smith* (1970) 11 Cal.App.3d 991, 997.)

Appellant did not file a notice of appeal from the November 19, 2015, judgment until December 27, 2016, more than thirteen months after he was served with the Notice of Entry of Judgment. He is not entitled to relief under Rule 8.108, subdivision (c)(3), because he did not file his second motion to vacate that judgment until September 23, 2016, more than eleven months after the entry of judgment. The appeal is, therefore, untimely.

It is true that void judgments may be attacked at any time. (§§ 580, 473, subd. (d).) Default judgments may be either void on their face because of a defect that appears in the judgment roll or void because of a defect established through extrinsic evidence. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1226.) We have examined the record of this case and the judgment roll contains no defect that would make the judgment void on its face. The defect that appellant sought to establish through extrinsic evidence also does not render the judgment void. (*Uva v. Evans* (1978) 83 Cal.App.3d 356.) Therefore, the appeal is untimely.

DISPOSITION

The appeal in this matter is untimely and is dismissed.

HALL, J.*

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

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