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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

GILBERT & NGUYEN et al., Plaintiffs, v. CARY MEDILL, Cross-complainant and Appellant, CARYLYN MOORE et al., Cross-defendants and Respondents.	B254773 (Los Angeles County Super. Ct. No. YC061706)

APPEAL from an order of the Superior Court of Los Angeles County, Michael P. Vicencia, Judge. Affirmed.

Law Offices of Jeffrey A. Shane and Jeffrey A. Shane; Cary Medill, in pro. per., for Cross-complainant and Appellant, Cary Medill.

Law Office of Wayne McClean, Wayne McClean and Christopher K. Roberts, for Cross-defendant and Respondent, Law Offices of Wayne McClean.

No appearance for Plaintiffs, Gilbert & Nguyen et al.

In a January 6, 2014 order, corrected nunc pro tunc January 17, 2014, the superior court voided two stipulated judgments obtained by Cary Medill on the ground they were the product of fraudulent documents Medill had filed with the court. On appeal Medill does not challenge the court's determination he had engaged in fraudulent conduct, arguing only that Judge Michael Vicencia lacked the authority to vacate or void an order or judgment entered by another superior court judge; that Code of Civil Procedure sections 128 and 128.7, the statutory grounds cited by Judge Vicencia, do not apply to entered judgments; and the January 17, 2014 order, which voided "[a]ny defaults, writs, judgments or stipulated judgments, taken by Cary Medill" was both vague and overbroad. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. *The Dispute Over the Ryder Truck Litigation Contingency Fee*

This appeal had its genesis in a personal injury action, *Carlyn Moore v. Ryder Truck Inc.*, filed February 26, 2007, which was ultimately settled before trial in July 2009 for $300,001. Moore had been represented in the litigation by a series of lawyers and law firms, including respondent Law Office of Wayne McClean, but not appellant Cary

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[1] Medill elected to proceed in this appeal without a record of any oral proceedings in the superior court and designated only an extremely limited set of documents for inclusion in the clerk's transcript. In addition to the notice of appeal, notice designating record on appeal and case summary, the record consists of the two stipulated judgments voided by Judge Vicencia; a writ of execution issued with respect to one of those judgments; the minute order setting the January 6, 2014 show cause hearing at which the judgments were voided; and the order being appealed. As a result, our summary of the factual and procedural background is necessarily limited, and our evaluation of Medill's contentions on appeal similarly circumscribed. (See, e.g., *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 ["[w]e reject defendants' claim, therefore, because they failed to provide this court with a record adequate to evaluate this contention"]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [to overcome presumption on appeal that an appealed judgment or order is correct, appellant must provide adequate record demonstrating error]; *Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348 [duty of appellant to provide adequate record].)

Medill, who is not authorized to practice law in California. (Medill resigned from the State Bar with charges pending in February 2005.) Disputes arose among Moore's various lawyers over their relative entitlement to the 40 percent contingency fee to which Moore had agreed ($120,000). That sum was apparently deposited at, or shortly after, the time of settlement into the client trust account of Marlene Greenly, who had represented Moore at some point in connection with the Ryder Truck litigation. Greenly is either the wife or former wife of Medill.

The Gilbert & Nguyen law firm filed the instant lawsuit in February 2010 to recover its attorney fees against Moore and Greenly (Super. Ct. L.A. No. YC061706), and the case was originally assigned to Judge William Willett. McClean and several other of Moore's former attorneys filed complaints in intervention asserting their right to a portion of the fees from the settlement. Judge Willett ordered Greenly to interplead the $120,000 for the Los Angeles County Treasurer to hold in trust pending resolution of the dispute.

2. *The Stipulated Judgments in Case Nos. YC062725 and BC453704*

According to the court's November 19, 2013 ruling setting the show cause hearing at which the order now challenged by Medill was made, about two weeks after Greenly deposited the $120,000 with the court, Medill filed a lawsuit against Moore (Super. Ct. L.A. No. BC448598). Two days later Medill and Moore stipulated to a judgment in the sum of $223,750. Soon thereafter Medill sued Moore in two additional lawsuits (Super. Ct. L.A. Nos. YC062725 and BC460155), and they entered into another stipulated judgment (in case No. Y062725) that Medill used as a basis for an order permitting withdrawal of $60,000 from the $120,000 that had been deposited with Los Angeles County. The court subsequently ordered the return of those funds. At this point Gilbert & Nguyen filed a new lawsuit (Super. Ct. L.A. No. YC066942) against Medill, Greenly and several others alleging conversion and RICO violations arising from the improper withdrawal of the interpleaded funds. This action was deemed related to the other cases involving the dispute over the Ryder Truck litigation fees.

In all, the court identified nine related lawsuits that had been filed, two by Gilbert & Nguyen, six by Medill and one by Moore herself. In Moore's action (Super. Ct. L.A. No. BC453704), filed January 25, 2011, Moore brought Medill into the action as a Doe defendant on Friday, May 13, 2011; on the same day Medill filed an answer and a cross-complaint against Moore to collect attorney fees and costs incurred in the Ryder Truck litigation purportedly on behalf of several attorneys. The next court day, Monday, May 16, 2011, Medill, representing himself, filed an ex parte application to allow stipulated judgment, signed by Moore, awarding Medill $60,000 "for loans and services rendered in this matter by cross-complainant [Medill], Mark La Rosa, John Peterson, Kendall Minter and others arising from the case of Carlyn Moore v. Ryder Truck." La Rosa, Peterson and Minter are not named as parties in case No. BC453704. There is no indication any of the other parties in case No. BC453704 or the related actions involving the dispute over the Ryder Truck litigation fees were provided notice of the ex parte application or the stipulated judgment between Moore and Medill.

Judge Elizabeth Allen White signed the order the day it was submitted. Medill subsequently obtained a writ of execution as a judgment creditor based on the stipulated judgment. On July 14, 2011 case No. BC453704 was deemed related to case No. YC061706 and transferred to Judge Willett's department.

3. *The Stipulated Judgment in Case No. YC061706*

Meanwhile, it appears from the case summary in case no YC061706 that Moore filed a cross-complaint in the action naming Medill as a cross-defendant on October 11, 2011; and he, on the same day, filed his own cross-complaint against Moore for breach of contract and common counts.[2] The two of them then entered into another stipulated

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[2] October 11, 2011 was also the date that Medill filed a Doe amendment in case No. YC062725, adding "Larry Jarvis" as a defendant. Jarvis filed his answer the same day along with a challenge to Judge Willett pursuant to Code of Civil Procedure section 170.6. As a result, both case No. YC062725 and related case No. YC061706 were transferred to Judge Rice. Judge Rice was subsequently disqualified in March 2012, and the cases were reassigned to Judge Nishimoto.

judgment in December 2011 "in the sum of $125,000 for services rendered in *Carlyn Moore v. Ryder Truck* plus costs, loans and advances of $25,000." That stipulated judgment was thereafter presented in May 2012 as an "unopposed matter" to Judge Nishimoto, who was then presiding in the case following the disqualification of Judges Willett and Rice pursuant to Code of Civil Procedure section 170.6.[3] Judge Nishimoto signed the judgment on July 2, 2012.

4. *The Order To Show Cause and Order Voiding Judgments*

Trial in case No. YC066942, Gilbert & Nguyen's conversion and RICO case, took place January 13- 22, 2014, before Judge Vicencia, who was then presiding over all the still-active related cases. Apparently in reviewing the files of all these related cases in preparation for trial, the court became concerned that the series of Doe/Roe amendments, cross-complaints, proofs of service and affidavits of prejudice that had been filed in the actions "are a fraud on the court." Accordingly, by minute order dated November 19, 2013 in the lead case, YC061706, the court issued an order to show cause to Medill (and others) on January 6, 2014 "why sanctions, including monetary sanctions not to exceed $5,000, issue sanctions or terminating sanctions, should not be imposed pursuant to California Code of Civil Procedure sections 128, 128.7 and the court's inherent authority to terminate litigation for misconduct [citation]."

The record on appeal contains no information about filings by any party between issuance of the order to show cause and the January 6, 2014 hearing; and, as noted, there is no reporter's transcript for the hearing on that date (or any other date, for that matter). The court's January 6, 2014 minute order states as to Medill, "[A]ny and all complaints, cross-complaints, defaults, writs, judgments or stipulated judgments are voided." On January 17, 2014 the court corrected nunc pro tunc the January 6, 2014 language just quoted and substituted in its place, "The Court further orders that any and all complaints

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[3] Statutory references are to this code.

and cross-complaints, filed by Cary Medill, are dismissed. Any defaults, writs, judgments or stipulated judgments, taken by Cary Medill, are ordered voided."

Medill filed a timely notice of appeal.[4]

DISCUSSION

Medill does not challenge either the sufficiency of the evidentiary support for the trial court's findings he had filed false and fraudulent papers with the court on multiple occasions or the appropriateness of the relief ordered based on those findings. Indeed, given the inadequacy of the appellate record (see fn. 1, above) and the presumption on appeal that the superior court order is correct, any such claims would be forfeited. (See, e.g., *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039 [in the absence of an adequate record to support a claim of error, we presume the judgment is correct].) Instead, focusing on the facial validity of the order voiding the stipulated judgments in case nos. BC453704 and YC061706, Medill argues sections 128 and 128.7 do not apply to judgments and, even if they do, one superior court judge lacks authority to void judgments entered by another superior court judge. The first contention is simply wrong. The second lacks merit under the procedural circumstances presented here.

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[4] Medill was declared a vexatious litigant in case No. YC061706 on October 23, 2012 and made the subject of a prefiling order pursuant to section 391.7 as of that date. Notwithstanding the prefiling order Medill filed his notice of appeal in this action in propria persona without first obtaining permission to do so; and the clerk mistakenly permitted the filing to occur. On February 18, 2015 this court notified Medill the appeal would be automatically dismissed unless he obtained permission to proceed with the appeal within 10 days of the filing of our order.

On February 26, 2015 Medill filed a request to file new litigation, attaching (and incorporating by reference) a copy of the opening brief he had filed in this matter and arguing his appeal has merit and was not filed to harass or cause delay. We reviewed Medill's brief and concluded his argument the order on appeal was void lacked merit. Accordingly, permission to file the appeal was denied. However, we granted Medill's alternative request that he be granted time to retain counsel to represent him in this appeal. Within the time specified Medill filed a substitution of attorney naming Jeffrey Shane as his counsel on appeal.

1. *The Trial Court Has Authority To Vacate or Void a Fraudulently or Collusively Obtained Stipulated Judgment*

Section 128, subdivision (a), provides, in part, "Every court shall have the power to do all of the following: [¶] . . . [¶] (8) To amend and control its process and orders so as to make them conform to law and justice. . . ." This provision authorizes the trial court, among other powers, to vacate (or void) a judgment if circumstances justify that action. (*Redwood Coast Watersheds Alliance v. State Bd. of Forestry & Fire Protection* (1999) 70 Cal.App.4th 962, 969 [under § 128, subd. (a)(8), trial court had full power to vacate its earlier judgment]; see *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 276 (*Neary*) ["[t]his provision [§ 128, subd. (a)(8)] is consistent with and codifies the courts' traditional and inherent judicial power to do whatever is necessary and appropriate, in the absence of controlling legislation, to ensure the prompt, fair, and orderly administration of justice"].)

Notwithstanding section 128, subdivision (a)'s reference to "every court," Medill argues the authority to vacate or void a judgment under subdivision (a)(8) is limited to appellate courts. This argument not only ignores case law to the contrary, cited above, but also misconstrues the 1999 amendment to section 128, subdivision (a)(8), which limited the authority of an appellate court to reverse or vacate a judgment as part of the parties' settlement of the litigation on appeal. (See Stats. 1999, ch. 508, § 1, p. 3365.)

Prior to 1999 section 128, subdivision (a)(8), consisted of the single sentence quoted above. (See Stats. 1993, ch. 219, § 63.3, p. 1580.) The Supreme Court in *Neary*, *supra*, 3 Cal.4th 273, relying on the appellate courts' inherent power to control judicial proceedings, as well as the express provisions of section 128, subdivision (a)(8), held the courts of appeal have the legal authority to reverse or vacate a trial court's judgment when the parties stipulate to such an action as a condition of a proposed settlement pending appeal. (*Neary*, at pp. 276-277.) The *Neary* Court further held, as a general rule, "the parties should be entitled to a stipulated reversal to effectuate settlement absent a showing of extraordinary circumstances that warrant an exception to this general rule. (*Id*. at p. 277.)

The Legislature responded to *Neary* in 1999 by amending section 128, subdivision (a)(8), to add language that reversed *Neary*'s presumption in favor of accepting stipulated reversals and instead created a presumption against stipulated reversals.[5] (See *City of Palmdale v. Board of Equalization* (2012) 206 Cal.App.4th 329, 338; *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005.) Nothing in the language of this amendment or its legislative history, which focused exclusively on the *Neary* opinion and the issue of stipulated reversals on appeal (see, e.g., Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1676 (1999-2000 Reg. Sess.) May 11, 1999), suggests it was intended to limit in any way the broad authority of the trial court to control proceedings before it, including to reconsider its own orders or judgments. (See generally *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 ["[i]t is also well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them"].)

Medill's argument regarding the reach of section 128.7, which authorizes a court to impose sanctions for filing a "pleading, petition, written notice of motion, or other similar paper" for an improper purpose (see *Li v. Majestic Industrial Hills LLC* (2009) 177 Cal.App.4th 585, 590), is similarly misplaced. Medill insists subdivisions (a) and (b)'s listing of "pleading, petition, written notice of motion, or other similar paper" does not encompass an entered judgment. He is partially correct. Section 128.7 is directed to attorneys, or parties if unrepresented, and provides that they certify, through their signatures on documents filed with the court, that the papers presented have merit and are

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[5] Without modifying the initial sentence of section 128, subdivision (a)(8), the Legislature added the following language to the subdivision, "An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Stats. 1999, ch. 508, § 1, p. 3365.)

not being used for an improper purpose. (See *Musaelian v. Adams* (2009) 45 Cal.4th 512, 516.) An entered judgment is the court's document and is outside the scope of section 128.7; but a stipulation requesting entry of a judgment, as here, is not. Like any notice of motion, the stipulations submitted by Medill requested the court act based on representations of fact and law. Having found these "other similar papers" were fraudulent and/or collusive, part of Medill's scheme to improperly manipulate the proceedings before it, the superior court was justified in imposing appropriate sanctions to correct this abuse of the court's processes.

2. *Under the Circumstances Presented Here, Judge Vicencia Was Empowered To Vacate or Void Prior Orders Entered by Another Superior Court Judge*

Reciting the general principle that one trial judge may not review the rulings of another (see, e.g., *In re Alberto* (2002) 102 Cal.App.4th 421, 427-428), Medill argues Judge Vicencia was not entitled to correct what he believed were erroneous actions taken by Judge White in entering the stipulated judgment in case No. BC453704 or Judge Nishimoto in entering the stipulated judgment in case No. YC061706. Medill's simplistic argument overlooks an important exception to the rule.

One trial judge may reconsider an issue already decided by a colleague when the first order was made through inadvertence, fraud or mistake. (*In re Alberto*, *supra*, 102 Cal.App.4th at p. 421; *Geddes v. Superior Court* (2005) 126 Cal.App.4th 417, 426, fn. 6.) Given the findings in the case at bar, both express and implied, this exception to the general rule is fully applicable.

In addition, neither Judge White nor Judge Nishimoto considered whether to vacate the stipulated judgments on the ground they were part of Medill's (and Moore's) fraudulent and collusive scheme to obtain the $120,000 that had been interpleaded. By his order to show cause, Judge Vicencia essentially set a sua sponte motion to vacate and addressed this question for the first time in each case. Although the consequence of his ruling was to set aside prior orders of other judges, the January 6, 2014 order was based on new information and involved consideration of additional factors not presented before. There was no breach of the general rule of comity.

3. *The Order Voiding Judgments Is Neither Vague nor Overbroad*

Medill's final contention is that the January 6, 2014 minute order, as corrected nunc pro tunc on January 17, 2014, is impermissibly vague and overbroad. He asks rhetorically, "Does this mean throughout Medill's lifetime? . . . Does it mean only judgments in the Long Beach Court House?"

We construe the January 6, 2014 order in the context in which it was issued—that is, by a judge presiding over a series of related cases involving Carlyn Moore and Medill or arising from the Ryder Truck litigation fee dispute. Thus, the order applies to all judgments or stipulated judgments in favor of Medill in any of those related cases, specifically including the stipulated judgment between Moore and Medill in the case at bar, case No. YC061706, signed by Judge Nishimoto, and the stipulated judgment between Moore and Medill in case No. BC453704, signed by Judge White. Read in light of the order to show cause issued on November 19, 2013, there is nothing either vague or overbroad about the language used in the order.

DISPOSITION

The January 6, 2014 order, as corrected January 17, 2014, is affirmed. Respondent Law Office of Wayne McClean is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J. STROBEL, J.*

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