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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

KAREN J. SEGEL, Plaintiff and Appellant, v. GREGORY M. JOHNSON et al., Defendants and Respondents.	B264997 (Los Angeles County Super. Ct. No. BC534103)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth A. White, Judge. Affirmed.

Karen J. Segal, in pro. per., for Plaintiff and Appellant.

Gregory M. Johnson, in pro. per., and Cinnamon McDaniel, in pro. per., for Defendants and Respondents.

Karen Segel appeals from a judgment which awards $7,325 to her former clients, Gregory Johnson and Cinnamon McDaniel. The trial court found Johnson and McDaniel overpaid Segel for her services and were damaged by Segel's advice. We affirm the judgment.

FACTS[1]

Segel represented McDaniel in her family law proceedings, including the dissolution of her marriage and the related child custody and support issues. McDaniel had two children with her ex-husband, Jason McDaniel. The younger child was born after McDaniel's separation from her ex-husband and was in McDaniel's sole custody. McDaniel had, however, previously stipulated that her ex-husband would have 90 percent visitation with her older son. Segel agreed to help McDaniel finalize her divorce and gain greater custody of her older son.

Segel advised McDaniel and Johnson, her father, that she charged an hourly rate of $350 plus costs and she required an $8,000 retainer. McDaniel and Johnson agreed to pay Segel $8,000 with an initial $4,000 check on May 5, 2010, and then $2,000 over the following two months. Because Johnson was not Segel's client, he signed a guaranty agreement for Segel's fees. Johnson paid Segel $300 for the initial consultation as well as the initial $4,000. He also paid the second retainer installment of $2,000 on June 7, 2010.

McDaniel was granted a final judgment of dissolution of marriage on June 18, 2010, and awarded 75 percent custody of her son. Although it appeared McDaniel's primary objectives had

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1 Because none of the proceedings were transcribed, the facts are taken from a settled statement on appeal signed by the trial court. Rules of Court, rule 8.137, subdivision (a)(2)(B).

been achieved, Segel assured her she could obtain greater custody of McDaniel's older child if the case was transferred to a different court. McDaniel agreed and Segel continued to work on the matter for another year by filing various motions to transfer the matter, lodging a complaint with the supervising judge about the commissioner presiding over the matter, and filing a writ petition in this court.

On June 28, 2010, McDaniel told Segel she could not pay the third $2,000 installment. She offered to pay Segel $500 per month until a pending personal injury lawsuit settled, at which time she would pay Segel "in full." McDaniel then paid Segel $500 per month from June 28, 2010, until April 30, 2012, for a total of $11,000. Johnson and McDaniel terminated Segel's representation of McDaniel on December 16, 2011, and a substitution of attorney was filed shortly thereafter. McDaniel received $17,250 on July 10, 2012 to settle her personal injury matter, but no payments were made to Segel from that settlement.

Segel sued McDaniel and Johnson on August 29, 2012, for breach of contract and sought $23,752.22 in damages. After several attempts, the trial court granted McDaniel and Johnson's motion for leave to file a cross-complaint alleging causes of action for fraud and breach of contract against Segel. Segel's demurrer to the cross-complaint was sustained with leave to amend. On January 22, 2015, McDaniel and Johnson filed an amended cross-complaint alleging additional causes of action based on the same facts, including for declaratory relief, fraud, breach of contract, negligence, and breach of fiduciary duty. Segel denied having been served the amended cross-complaint, but signed a "general

denial" stating all causes of action were barred by the statute of limitations at the trial court's urging.

The parties participated in non-binding arbitration provided by the Los Angeles County Bar Association (LACBA). The arbitrator found Segel overcharged her clients and awarded them $8,714.38. McDaniel and Johnson petitioned the trial court to confirm the arbitration award, which was denied.

The case proceeded to trial and Segel, McDaniel, McDaniel's ex-husband, and Johnson testified to the facts described above in a bench trial. Segel testified she performed all of the services asked of her, including finalizing the judgment of dissolution, which McDaniel's previous attorney failed to do, and obtaining 90 percent custody of the children for McDaniel. Segel also testified neither McDaniel nor Johnson expressed dissatisfaction with her services. McDaniel's ex-husband testified he knew McDaniel and Johnson were very pleased with all of Segel's work. Johnson testified he believed the $8,000 was a flat fee for Segel's services. McDaniel testified Segel advised her to follow her ex-husband to obtain pictures of him driving their son without a license and as a result, McDaniel violated a restraining order prohibiting contact with him. She was arrested and paid $1,500 for a bail bond and $3,000 to a criminal lawyer to resolve the issue.

The trial court awarded $7,325 to McDaniel and Johnson on their amended cross-complaint. The trial court noted Segel billed McDaniel and Johnson a total of $45,400 in fees despite having achieved McDaniel's custody goals shortly after she was hired. The trial court found Segel incurred unnecessary expense in trying to have the case transferred, including filing a writ petition to the Court of Appeal and writing letters to the

Supervising Judge of the Family Law Division. The trial court concluded, "Despite billing McDaniel for another year and a half, Plaintiff was unsuccessful in obtaining any greater visitation for McDaniel than had been obtained at the July 13, 2010 hearing." The trial court also took issue with Segel's billing records, finding they lacked "clarity." It credited McDaniel's testimony regarding Segel's advice to follow her ex-husband, which resulted in her arrest. The trial court recounted the facts supporting its decision and identified the evidence it relied upon by reference to the witness' testimony or the trial exhibit number.

Subsequent to the award, Segel sought twice to disqualify the trial judge for bias and moved to set aside the judgment and for a new trial. When those motions were denied or stricken, Segel appealed.

DISCUSSION

Segel's challenge to the judgment in favor of McDaniel and Johnson rests entirely on the allegation that the trial court was biased against her. As a result, she urges us to reverse the judgment and remand for further proceedings before a different bench officer. According to Segel, her "due process rights were destroyed by an opinion based on . . . extrajudicial activity, including extrajudicial source plagiarism, accusations, agreeing with strangers' opinions, and in judge's combining adjudicative, investigative and prosecutorial functions." We find no basis in fact to support Segel's accusations.

I. The Law on Judicial Bias

Canon 3B(5) of the California Code of Judicial Ethics compels a judge to "perform judicial duties without bias or prejudice and should not . . . by words or conduct, manifest bias or prejudice." The Due Process Clause entitles an individual to

an impartial and disinterested tribunal in both civil and criminal cases. (*Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 242-243; *Offutt v. United States* (1954) 348 U.S. 11, 14.)[2]

Bias has most often been found to exist when the judge "'has a direct, personal, substantial pecuniary interest in reaching a conclusion against [one of the litigants].'" (*Crater v. Galaza* (9th Cir. 2007) 491 F.3d 1119, 1131; *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 214 (*Fresh Start*) [discussing bar against financially interested adjudicators], disapproved on other grounds by *People v. Freeman* (2010) 47 Cal.4th 993, 1006, fn. 4.) "Absent a financial interest, adjudicators are presumed impartial. [Citations.] To show nonfinancial bias sufficient to violate due process, a party must demonstrate actual bias or circumstances "'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" [Citation.] The test is an objective one. [Citations.] While the 'degree or kind of interest . . . sufficient to disqualify a judge from sitting "cannot be defined with precision"' [citation], due process violations

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[2] The statutory basis for disqualifying a judge is set forth in Code of Civil Procedure section 170.1. However, "a petition for writ of mandate is the exclusive method of obtaining review of a denial of a judicial disqualification motion." (*People v. Mayfield* (1997) 14 Cal.4th 668, 811, overruled on other grounds by *People v. Scott* (2015) 61 Cal.4th 363, 390, fn. 2.) "Accordingly, we address the issue of judicial disqualification solely under the rubric of due process." (*People v. Freeman, supra,* 47 Cal.4th at p. 1000.) Due process provides a narrower path to overturn a judgment since it requires actual bias, not merely the appearance of bias. (*Id.* at p. 1006.)

generally are confined to 'the exceptional case presenting extreme facts' [citation]." (*Fresh Start, supra,* 57 Cal.4th at p. 219.)

For example, an "exceptional case" may come about when there is a failure to "observe minimum constitutionally required separation between adjudicative, investigatory, and accusatory functions." (*Fresh Start, supra*, 57 Cal.4th at p. 219.) "To prove a due process violation based on overlapping functions thus requires something more than proof that an [adjudicative body] has investigated and accused, and will now adjudicate. '[T]he burden of establishing a disqualifying interest rests on the party making the assertion.'" (*Id.* at p. 221.)

The court in *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237 found judicial bias was demonstrated given the judge's expressed hostility toward sexual harassment cases and the stereotypical attitudes and misconceptions he adopted regarding the victim's credibility. For example, the trial judge cross-examined the victim about the weather on the day before her assault. Then, he unexpectedly took judicial notice of the rainfall on the day in question and "used the putative discrepancy between this fact and appellant's testimony as a reason to question her overall credibility." (*Id.* at p. 259, fn. 9.) In *Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100, the commissioner encountered a child whom she had adjudged a dependent of the court at a holiday party. The commissioner approached the child and foster mother several times during the party, even picking the child up and carrying her away for five minutes. The appellate court found from her comments that she considered her social encounter with the child in deciding to return the child to her mother's custody. (*Id.* at pp. 108-109.)

Judicial independence has also been brought into question in cases involving the verbatim adoption by a court of a party's arguments. In *Bright v. Westmoreland County* (2004) 380 F.3d 729 (*Bright*), the district court requested the defendants provide a proposed opinion after they moved for dismissal of the case. The district court then adopted the proposed opinion as its own, with only slight grammatical and stylistic changes. (*Id.* at p. 731.) On appeal, the Third Circuit acknowledged that the adoption of proposed findings of fact and conclusions of law drafted by someone else is not by itself a reason for reversal. However, it expressed doubt that the district court used its independent judgment because the district court indicated it would grant the motion before it received the plaintiff's opposition and the opinion adopted an argument that was not addressed in the briefs and was only contained in the proposed opinion. (*Id.* at p. 732.) The Third Circuit reasoned, "Judicial opinions are the core work-product of judges. [¶] They are much more than findings of fact and conclusions of law; they constitute the logical and analytical explanations of why a judge arrived at a specific decision. They are tangible proof to the litigants that the judge actively wrestled with their claims and arguments and made a scholarly decision based on his or her own reason and logic." (*Id.* at p. 732.)

II. No Evidence of Bias

Segel contends on appeal that her due process rights were "destroyed by a judgment lacking independence because rooted in bias derived from extrajudicial conduct including extrajudicial source plagiarism, investigations, and accusations[.]" Thus, the judgment should be reversed and the trial judge disqualified. In particular, Segel complains the trial judge plagiarized from

the LACBA arbitrator's opinion, considered hearsay evidence, accused Segel of violating the Rules of Professional Conduct, and ignored her own orders and "perverted" the facts in favor of Johnson and McDaniel. We consider each of these allegations below and conclude none exhibit bias sufficient to overcome the presumption of impartiality. (*Fresh Start, supra,* 57 Cal.4th at p. 219.) Simply put, this is not "'the exceptional case presenting extreme facts.'" (*Ibid.*)

A. LACBA Opinion

Segel's chief complaint relates to the trial court's adoption of portions of the LACBA arbitrator's opinion. According to Segel, the trial court plagiarized the LACBA arbitrator's decision in 11 places. While it is clear the trial judge adopted portions of the arbitrator's opinion, that fact alone is not sufficient reason to conclude the trial judge did not use its independent judgment. (*Bright, supra,* 380 F.3d at p. 731.) Unlike in *Bright*, there is no indication the trial judge adopted an argument that was not presented by the parties at trial or used a piece of evidence that was not admitted at trial. Indeed, the trial court carefully identified each piece of evidence it considered in reaching its conclusion by listing the witness' name or the trial exhibit number. Moreover, it is clear the trial court used its independent judgment when it arrived at a different award amount from that of the arbitrator.

In *Bright*, the district court adopted, almost verbatim, the entirety of the defense counsel's proposed order. By contrast, the 11 instances of "plagiarism" cited by Segel do not constitute anything of significance in a 20-page decision. Segel fails to explain how and why these instances of "plagiarism" are significant, just that their mere existence is sufficient to

demonstrate bias. We disagree. In any event, four of the 11 statements are from case law or rules of professional conduct which are directly applicable to the issues at hand. For example, both the LACBA arbitrator and the trial judge quote the factors listed in rule 4-200 of the Rules of Professional Conduct to be considered in determining the conscionability of an attorney fee. Both also quote from *Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, an attorney fees case. That the trial court and the arbitrator would rely on the same law to reach a similar conclusion does not demonstrate bias.

Neither are we persuaded by Segel's argument that the trial court used the arbitrator's decision as collateral estoppel or res judicata in violation of Business and Professions Code section 6204, subdivision (e). Although repeated references to an arbitrator's opinion may raise the specter of Business and Professions Code section 6204, subdivision (e) and, therefore, generally should be avoided, the trial court's reliance on the LACBA arbitration decision here did not violate the statute. For the reasons stated above, it is clear the trial court reached its own conclusion independent of the arbitrator's.

B. Superior Court Letter

Next, Segel contends the trial court relied upon an "extrajudicial . . . opinion to further accuse appellant" of improper behavior. Specifically, Segel takes issue with the court quoting from a letter written by Marjorie Steinberg, Supervising Judge of the Family Law Department of the Superior Court, regarding Segel's attempts to transfer McDaniel's case from Commissioner John Chemeleski. Segel asserts this "hearsay letter" "was not in evidence and the issues and accusations were never mentioned at trial."

Segel is mistaken. The letter was admitted into evidence as Trial Exhibit No. 63.[3] There is no indication in the Settled Statement or elsewhere in the record that Segel objected to the admission of the letter at trial. Her failure to object on that ground forfeits the argument on appeal. (*SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 564-565; Evid. Code, § 353.) Thus, Segel's characterization of Judge Steinberg's letter as "extrajudicial" evidence is incorrect. The letter was properly admitted into evidence.

Notwithstanding its admissibility, the trial judge's use of the letter does not demonstrate bias. In the letter, Judge Steinberg details Segel's numerous attempts to transfer the matter and disqualify the commissioner presiding over McDaniel's case. The trial court quoted extensively from that portion of the letter. It then noted, "as Judge Steinberg points out, Plaintiff incurred unnecessary expense in writing letters and filing a writ when she could have simply notified Commissioner Chemeleski that her client would not stipulate to his presiding over the matter. Of greater importance to this Court is why Plaintiff after obtaining what McDaniel wanted from Commissioner Chemeleski, she then attempted to have him removed from the case by writing letters and filing a Writ with the Court of Appeal at a cost of at least $1,713.25." That Segel

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[3] The clerk's transcript included trial exhibits 1-42, but omitted exhibits 50-68, which Johnson and McDaniel lodged with this court on August 4, 2016. Segel moved to strike the lodging of exhibits 50-68 under Rules of Court, Rule 8.122, subdivision (a)(2). The motion to strike is denied. Segel also moved to strike Johnson and McDaniel's respondents' brief on the ground it contained rule violations and statements of "character assassination." That motion to strike is also denied.

attempted to have the case transferred is not disputed. Neither is the fact that Segel charged Johnson and McDaniel for all of her efforts to remove the commissioner. All of that is reflected in her billing records. Unlike in *Catchpole,* where the trial judge sua sponte took judicial notice of the weather to discredit the victim's testimony, or in *Guadalupe,* where the commissioner considered her own social contact with the dependent, the trial judge here did not conduct her own research or consider evidence not presented at trial to render her decision.

Segel contends the trial court relied on Judge Steinberg letter to "further accuse" her of: (1) attempting to remove the commissioner hearing McDaniel's case; (2) submitting herself to the commissioner's jurisdiction; and (3) "having arranged for a child custody evaluation." We are unaware how these are "accusations" rather than findings of fact derived from the evidence. No bias is shown.

C. Rule Violation

Segel contends the trial judge additionally exhibited bias by accusing her of violating rule 4-100 of the Rules of Professional Conduct.[4] Johnson and McDaniel alleged Segel violated Rule 4-100 when she failed to deposit their retainer in her client trust account. The trial court found in its judgment that Segel "violated California Rules of Professional Responsibility Rule 4-100(a) by immediately depositing unearned fees into her personal bank account which would ma[ke] her subject to State Bar proceedings . . . Although Rule [4-100] . . . provides that there is no private right of action based upon a violation of the disciplinary rules, the court is guided by these rules in

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[4] Rule 4-100 sets forth the guidelines for preserving the identity of client funds and property.

determining the reasonableness of Plaintiff's fees." Segel contends this comment demonstrated bias because the trial judge adopted the role of prosecutor. That is a gross overstatement. The trial judge did not "prosecute" Segel in any way. She could not have. As she noted in her opinion, any disciplinary action would have to originate from the State Bar. Indeed, the trial judge could have, but did not, refer Segel to the State Bar for the violation. (See Bus. & Prof. Code, § 6086.7.)

D. Treatment of Fourth Amended Cross-Complaint

Segel next contends the trial court exhibited bias when it allowed Johnson and McDaniel to file an amended cross-complaint, which added four causes of action and which failed to cure the defects the trial court identified in its order. Segel also avers the amended cross-complaint was never served on her. Segel stated she only became aware of a cross-complaint sometime at the close of trial on March 13, 2015, which came "like a bolt out of the blue." She admitted she "sign[ed] something called a 'general denial' on 2/10/2015," which would allow the trial to go forward, but she did not know what a general denial was.

To the extent Segel contends the trial court erred in allowing the amended cross-complaint to be filed, Segel has waived any argument on this issue by failing to object to it below. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.) Moreover, the trial court's conduct is not evidence of bias. The trial court has ample discretion to grant leave to amend the pleadings at any stage of the action. (Code of Civil Proc., § 473, subd. (a)(1).) There is no bias resulting from the trial court's exercise of its judicial discretion.

E. Insufficient Evidence

Lastly, Segel accuses the trial court of "perverting facts and ignoring testimony and evidence" in reaching its decision. Segel details the many ways the trial court disbelieved her evidence and found McDaniel's and Johnson's testimony credible.
In short, Segel merely recounts the ways the trial court did its job as the factfinder. This argument is without merit.

DISPOSITION

The judgment is affirmed. Respondents to recover their costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.