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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

RANI LEE,

Plaintiff and Respondent,

v.

ANNIE YOON,

Defendant and Appellant.

B238778

(Los Angeles County
Super. Ct. No. BC209931)

APPEAL from an order of the Superior Court of Los Angeles County.
Matthew C. St. George, Commissioner. Affirmed.

James Mortensen for Defendant and Appellant.

Herzlich & Blum and Allan Herzlich for Plaintiff and Respondent.

Annie Yoon (appellant) appeals from a final order after judgment. On December 27, 2011, respondent Rani Lee (respondent) filed a motion for an assignment order against appellant pursuant to Code of Civil Procedure sections 708.510 to 708.560. The motion was granted on January 24, 2012. Appellant challenges the order, arguing that the trial court erred in declining to rule on appellant's evidentiary objections; allowing respondent to enforce a judgment which respondent had no standing to enforce; and granting assignment of unidentified potential claims that may occur in the future. We find no error, therefore we affirm the order.

BACKGROUND AND PROCEDURAL HISTORY

On May 6, 1999, respondent filed this case against appellant in propria persona. On October 1, 1999, respondent obtained a default judgment.

On May 1, 2008, the judgment was renewed.

Appellant filed a motion to set aside the default judgment on May 14, 2008, arguing that service was deficient. On June 17, 2008, the motion was denied.

In August 2011, appellant filed a motion to vacate the renewal of judgment. In the motion, appellant argued that because respondent had filed for Chapter 7 bankruptcy on February 12, 2003, and received a discharge on June 16, 2003, respondent was no longer the judgment creditor. Although respondent had not listed the default judgment as part of her personal property with the bankruptcy court, appellant argued that the commencement of the Chapter 7 bankruptcy extinguished respondents' legal rights and interests in all pending litigation. On October 17, 2011, the trial court denied the motion, finding that it was barred by the statute of limitations. The court cited former Code of Civil Procedure section 638.170, subdivision (b), which provided that any motion to vacate the renewal of judgment must be brought within 30 days after service of the notice of renewal.

On December 27, 2011, respondent filed a motion for assignment order against appellant. The motion was granted on January 24, 2012.

On January 27, 2012, appellant filed her notice of appeal.

DISCUSSION

I. Evidentiary objections

Along with the motion for assignment order, respondent's attorney, Allan Herzlich (Herzlich), filed a declaration. Herzlich declared that he had attended a meeting of JC 2020 Corporation, at which the president of the corporation stated that appellant is a manager for the corporation and receives compensation in that position. In addition, the corporation pays appellant's rent directly to appellant's landlord. On the basis of this information, Herzlich expressed his belief that appellant had rights to payments due or becoming due from JC 2020 Corporation.

Appellant filed evidentiary objections to Herzlich's declaration, mainly on the grounds of hearsay, speculation, and lack of foundation.

At the hearing on the motion for assignment order, the court announced that its tentative decision was to grant the motion. Appellant's counsel inquired as to whether the court had any rulings on appellant's evidentiary objections. The court stated: "No. I don't regard pleadings as evidence." Appellant's counsel noted that there was a declaration submitted with the motion, to which the court responded that it was not going to rule on the evidentiary objections. The court explained "this is not a trial . . . I read what someone puts into a declaration, I read what the other side puts in their declaration, but it's not crucial to my decision. I'm just doing law and motion here."

Citing *Hollywood Screentest of America, Inc v. NBC Universal, Inc.* (2007) 151 Cal.App.4th 631, 642 (*Hollywood*), appellant argues that trial courts have a duty to rule on evidentiary objections. The cited page of *Hollywood* involved a discussion of the importance of evidentiary objections in the context of a summary judgment motion. The *Hollywood* court explained that "'assessing the merits of a summary judgment or adjudication motion involves a determination as to what evidence is admissible and that which is not.' [Citation.]" (*Ibid.*) The case does not suggest that there is a duty to rule on evidentiary objections where, as here, the court has deemed the declaration in question to be inconsequential to its decision.

The court stated that Herzlich’s declaration was “not crucial” to its decision. “Evidence which is not pertinent to the issues raised by the pleadings is immaterial.” (*Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4.) The court was under no obligation to consider the evidence contained in the declaration, because the information was not germane to its decision. Appellant provides no authority for the proposition that a court must rule on evidentiary objections to such evidence.

Appellant argues that the declaration of respondent’s counsel was the only evidence of facts necessary to grant the motion, such as information regarding appellant’s income and the fact that no payments have been made to respondent as judgment creditor. However, appellant cites no legal authority suggesting that those facts were necessary in order for the court to grant the motion.¹

In addition, we note that appellant did not dispute the facts contained in Herzlich’s declaration. In her opposition to the motion, appellant did not deny respondent’s assertion that the judgment remained wholly unsatisfied. Nor did appellant deny respondent’s allegations regarding the amount of money that appellant made or the source of that money. Instead, in her opposition, appellant focused solely on the question of whether respondent’s intervening bankruptcy barred or estopped respondent from collecting on the judgment. Respondent’s statements that the judgment was wholly unsatisfied, and that appellant was making a certain amount of income every month, were therefore undisputed. The court was not required to consider evidence on these subjects. (See, e.g., *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308,

¹ Code of Civil Procedure section 708.510 suggests that respondent must be a judgment creditor and that there must be some amount remaining due on the money judgment. In this case, the assignment order was broadly worded to encompass “any and all payments due or to become due to the Judgment Debtor from the ‘Obligors’—defined as any and all persons and/or entities from whom (or which) monies are currently due or may become due to the Judgment Debtor—including, without limitation, Obligor JC 2020 Corp.” Thus, respondent was not required to prove that appellant was owed money from any specific person or entity. Pursuant to the order, any and all payments due to appellant, from any “Obligor,” were assigned to respondent as judgment creditor until such time as the judgment is fully satisfied or the order amended.

314 [“the court need only review evidence pertaining to disputed facts; there is no need for it to review evidence supporting facts which are . . . undisputed nor evidence not referenced in . . . the opposing party’s responsive statement”].)

Further, even if the trial court erred in failing to rule on appellant’s evidentiary objections, we find that appellant has failed to meet her burden of proving that any such error is reversible. The California Constitution mandates that no judgment shall be reversed absent a showing of prejudicial error: “No judgment shall be set aside . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” (Cal. Const., art. VI, § 13.)

Code of Civil Procedure section 475 also provides that “[n]o judgment . . . shall be reversed . . . by reason of any error . . . unless it shall appear from the record that such error . . . was prejudicial, and also that by reason of such error . . . the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error . . . had not occurred or existed.” Such prejudice is not presumed, and the burden is on the appealing party to demonstrate that a miscarriage of justice has occurred. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105.)

In opposition to respondent’s assignment motion, appellant raised no arguments that she had paid any portion of the judgment, that the information obtained at the JC 2020 Corporation meeting was incorrect, or that any of the information contained on the spreadsheet attached to Herzlich’s declaration was inaccurate. Nor has appellant made any such arguments on appeal. Therefore, appellant has failed to convince this court that a reversal of the judgment would result in a different outcome. We find that, if any error occurred, it was harmless as a matter of law.²

² Appellant makes the general assertion that if her evidentiary objections were granted, there would have been no evidence to support the motion, which would have resulted in denial of the motion. We reject this argument, because the trial court made it clear that the evidence contained in the declaration was not crucial to its decision. As set

II. Respondent's standing to enforce the judgment

Appellant next argues that respondent has no standing to enforce the judgment because she declared bankruptcy in 2003. Appellant cites *M&M Foods, Inc. v. Pacific American Fish Co., Inc.* (2011) 196 Cal.App.4th 554 (*M&M Foods*), which explains that “[t]he commencement of Chapter 7 bankruptcy extinguishes a debtor’s legal rights and interests in any pending litigation, and transfers those rights to the trustee, acting on behalf of the bankruptcy estate.” (*Id.* at p. 562, citing 11 U.S.C. § 541(a)(1).) The *M&M Foods* court also explained that “[g]enerally speaking, a pre-petition cause of action is the property of the Chapter 7 bankruptcy estate, and only the trustee in bankruptcy has standing to pursue it.” [Citations.]” (*Ibid.*)

If the trial court had applied this law, appellant argues, it would have denied the assignment motion on the ground of lack of standing.

Appellant raised this issue with the trial court at the hearing on the assignment motion. The trial court stated: “[T]he concerns you raised . . . regarding the validity of the judgment and such are not appropriately brought before this court. I just don’t deal with whether or not a judgment[] [is] valid or not. It should be handled in the court that issued the judgment.” The court continued, “If you have a problem with the judgment that was issued you have to take that to the court that issued it, and frankly from what I saw it looks like you already tried to do that twice, and each time it was not successful.”

Appellant argues that the court recharacterized appellant’s arguments as an effort to vacate the judgment. In fact, appellant argues, she was not seeking to vacate the judgment but to oppose the enforcement of a judgment by a plaintiff that no longer had standing to do so. Appellant informed the trial court “[t]his is purely an enforcement issue.” The trial court disagreed with appellant’s position, stating “[i]f, in fact, you believe the judgment should no longer be enforced because . . . of bankruptcy

forth above, much of the information contained in the declaration was not essential to the general assignment order. Further, much of the information was also alleged within the text of the motion, and was not contested within appellant’s opposition.

proceedings, I think you need to address that in the court that issued the judgment as opposed to here.”

We agree with the trial court’s implicit conclusion that appellant’s arguments were, in effect, a challenge to the validity of the judgment. The renewal of judgment clearly lists respondent as the judgment creditor. Through the bankruptcy cases appellant cites, she attempts to convince the court that respondent is no longer the legal judgment creditor. Appellant’s position is an attack on the validity of the judgment. (See, e.g., *Timberline, Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1368–1369 [the act of renewing an unsatisfied judgment is an invalid act if attempted by a suspended corporation, for which the appropriate remedy is an order vacating the renewal of judgment].) Appellant has cited no authority for her position that a judgment debtor may challenge the validity of a renewed judgment by means of opposition to a motion for assignment.³

Appellant was entitled to move to vacate the judgment on the ground that respondent had no standing to enforce the judgment, which she did. (Code Civ. Proc., § 683.170, subd. (a).) However, because appellant failed in that attempt, respondent remained in possession of a valid judgment. From the record available to this court, it appears that appellant did not appeal the court’s order denying her motion to vacate the renewal of judgment.⁴ Thus, respondent remained the legal judgment creditor, and was entitled to make a motion for an assignment order. (Code Civ. Proc., § 708.510.)

³ Appellant cites *In re MortgageAmerica Corp.* (5th Cir. 1983) 714 F.2d 1266, and *Practice Service Corp. v. HCA Health Services* (1995) 37 Cal.App.4th 1003, for the proposition that, when a judgment creditor has a judgment against a bankrupt company, the judgment creditor may not collect its judgment from the person who owned and looted the company because only the bankruptcy trustee has standing to recover the looted assets. The matter before us does not involve the factual scenario discussed by those cases, therefore we find them inapplicable.

⁴ The renewal of a judgment is not an appealable event, but an order denying a motion to vacate renewal of a judgment is appealable as an order after judgment. (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262, fn. 4.)

III. Assignment of unidentified future claims

Appellant's final argument is that the court granted assignment as to potential and unidentified income rights. Appellant claims that this was manifest error, as it violated appellant's due process rights to know the subject of the action in order to be able to assert defenses and exemptions. Appellant explains that Code of Civil Procedure section 708.520 allows a defendant to assert various exemptions to assignment, but the right to such exemptions is meaningless if the income to be assigned is not identified so that the proper exemptions can be asserted.⁵

Appellant raised this issue with the trial court. Appellant's counsel objected that the proposed assignment order "requests a general order for every obligation and every, all money that might become due of any kind without being specific as to what money that is." Appellant protested that "it's necessary for the court to take into account the exemptions which might be submitted by the judgment debtor." The following exchange then occurred:

"THE COURT: And were any exemptions submitted?

"[APPELLANT'S COUNSEL]: Well, your Honor, the point is that—

"THE COURT: Were any exemptions submitted, counsel?

"[APPELLANT'S COUNSEL]: Well, no, your Honor.

"THE COURT: So then how can I rule on them?

"[APPELLANT'S COUNSEL]: Well, the point is that no specific property, no specific rights were identified. So it's not possible to request an exemption as to a certain income if that income is not identified so that we know whether an exemption applies to it."

⁵ Code of Civil Procedure section 708.520 discusses orders restraining assignment of the right to certain payments. Section 708.550 also provides that a "judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement" Section 708.560 allows the judgment creditor to "apply to the court on noticed motion for an order to modify or set aside the assignment order."

The court noted that the proposed assignment order specified that any payments in the nature of earnings would be assigned “only up to 25 percent,” and that this provision “seems to answer [appellant’s] concern.” When appellant’s counsel protested that the proposed order went on to attach payments other than wages, the court stated: “Yes, and that is permissible.”

Appellant provides no legal support for her argument that the right to exemption is meaningless if the income to be assigned is not identified. In fact, Code of Civil Procedure section 708.520 specifies that an order restraining assignment may be made at the time that the motion for assignment order is made “or thereafter.” (Code Civ. Proc., § 708.520, subd. (a).) And, as respondent points out, appellant may also avail herself of the provisions of section 708.560 at any time after the assignment order has been granted. Thus, in the event that the assignment order is served on another potential obligor, appellant may, at that time, seek to modify or set aside the assignment order.

Appellant has presented no legal authority suggesting that every future income right that might be subject to the assignment order must be identified at the time the order is made. “A judgment or order of the lower court is *presumed correct*.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Further, “[w]here a point is merely asserted . . . without any . . . authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court. [Citation.]” (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.) Because appellant has provided no authority to the contrary, we presume that the trial court did not err in making a general assignment as set forth in the order.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST