Filed 10/31/19 Scher v. Burke CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAIME SCHER et al., Plaintiffs and Appellants, v. JOHN BURKE et al., Defendants and Respondents.	B290011 (Los Angeles County Super. Ct. No. BC415646)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Reversed with directions.

Cunningham, Treadwell & Bartelstone, James H. Treadwell, G. Richard Gregory III; Aleshire & Wynder and June S. Ailin for Plaintiffs and Appellants.

Garrett & Tully, Ryan C. Squire, Zi C. Lin, Motunrayo D. Akinmurele; Levinson Arshonsky & Kurtz, Richard I. Arshonsky and Jason J. Jarvis for Defendants and Respondents Richard

Erickson, Wendie Malick, Richard B. Schroder, and Andrea D. Schroder.

Law Offices of Robert S. Gerstein, Robert S. Gerstein; Law Office of Bennett Kerns and Bennet Kerns for Defendants and Respondents John Burke, Germaine Burke, and Bennett Kerns, Trustee of the A.S.A. Trust.

Ferguson Case Orr Paterson, Wendy C. Lascher and Joshua S. Hopstone for Defendant and Respondent Gemma Marshall.

Plaintiffs Jaime Scher and Jane McAllister appeal from the declaratory judgment entered by the trial court upon remand from both this court and the Supreme Court. Plaintiffs contend that the judgment materially deviates from the remand instructions and exceeds the scope of the issues framed by the pleadings because it allegedly grants affirmative relief to defendants, quiets title, and adjudicates access by property not at issue in the underlying lawsuit and by people who were purportedly not parties to the lawsuit. As written, the judgment is inadequate. Accordingly, we reverse.

BACKGROUND

I. This lawsuit

Plaintiffs own two parcels of real property in the unincorporated Topanga Canyon area of Los Angeles County. They sued each of the landowners[1] south of them along Henry

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[1] Defendants are, in order from north to south, Gemma Marshall, Richard Erickson and Wendie Malick, Richard B. and Andrea D. Schroder, Christina Erteszak, Northern Trust Bank, N.A., Bennet Kerns, Trustee of the A.S.A. Trust dated June 28,

Ridge Motorway and Gold Stone Road.[2] The complaint alleged that defendants' properties were burdened and plaintiffs' properties were benefitted by express, equitable, prescriptive, and implied easements for "access to" and "ingress and egress over and across" the two roads, and that those two roads had been dedicated as public streets. The complaint sought (1) to quiet title to the easements, (2) to enjoin defendants from interfering with plaintiffs' use and enjoyment of the two roads, and (3) a declaration and "judicial determination of [plaintiffs'] rights and interests in and to [the subject easements]" and of their right to use the easements for ingress and egress, and to use the two roads as public streets. Plaintiffs alleged that a judicial declaration was "necessary and appropriate" so that "plaintiffs may ascertain their rights and interests in and to their easement[s] over and across the defendants' properties and in order to remove any cloud upon the Scher Property."

II. The original judgment of the trial court

After a bench trial, the court entered judgment partly in favor of defendants and partly in favor of plaintiffs (the original judgment). The trial court (1) declared that Henry Ridge Motorway and Gold Stone Road had been impliedly dedicated as public streets, (2) quieted title to easements over the two roads in favor of plaintiffs, and (3) enjoined and restrained defendants

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2005 on behalf of John Burke & Germaine Burke, John F. and Germaine Burke. (Collectively, defendants.)

[2] Gold Stone Road is identified in the record variously as Goldstone Road and Gold Stone Road. For consistency, and following the parties' lead, we will use the two-word name.

from obstructing the roads. The original judgment ruled against plaintiffs on their theories of express, prescriptive, and equitable easements. (*Scher v. Burke* (Sept. 11, 2015, B235892) 1, 17 (*Scher I*) [see *Scher v. Burke* (2017) 3 Cal.5th 136 affirmed].)

III. The appeal and cross appeal

Plaintiffs appealed and defendants cross-appealed. This court affirmed that portion of the judgment in favor of defendants and reversed the part in plaintiffs' favor, meaning that we held entirely in favor of defendants.

In particular, we held that plaintiffs had no express, prescriptive, equitable, or implied easement for access along Henry Ridge Motorway and Gold Stone Road and through defendants' properties. We further held that the two roads had not been and were not dedicated to public use. Toward that end, we explained that "Civil Code section 1009 bars all use of non-coastal private real property . . . from ever ripening into an implied dedication to the public after the effective date of that statute," i.e., March 4, 1972. (*Scher I*, *supra*, B235892 at p. 2.) Our disposition directed the trial court to "enter a declaratory judgment in favor of defendants consistent with the principles set forth in this opinion." (*Id*. at p. 46.)

IV. The Supreme Court's opinion

Plaintiffs petitioned the California Supreme Court for review of the question whether Henry Ridge Motorway and Gold Stone Road had been dedicated as public streets. This question required analysis of whether Civil Code section 1009 banned all use of non-coastal private property, or simply recreational use of such property, from ripening into an implied dedication to public use.

The Supreme Court affirmed our construction of Civil Code section 1009 and disapproved cases holding to the contrary. After describing our opinion as having "directed the trial court to enter a declaratory judgment in favor of defendants" (*Scher v. Burke*, *supra*, 3 Cal.5th at p. 140), the Supreme Court "affirm[ed] the Court of Appeal's judgment remanding the case to the trial court with directions to enter judgment in favor of defendants." (*Id.* at p. 150.)

V. Postremand from the Supreme Court

Defendants lodged their proposed judgment for the trial court's review (the December 5, 2017 judgment). Of relevance here, the December 5, 2017 judgment recites as to the legal descriptions of each of the defendants' properties, with the challenged portions in italics, that "[n]either Plaintiffs, nor Plaintiffs' Henry Ridge Property, nor Plaintiffs' Vacant Property, *nor any other property owned by Plaintiffs*, *nor any of Plaintiffs' tenants, guests, or invitees*, *nor any member of the general public*, *has any* right, title, interest, or *easement* (*whether in gross, appurtenant, by implied dedication, or otherwise*) in, over, across, or to that real property owned by defendants." (Italics added.)

Shortly thereafter, the trial court allowed plaintiffs to file objections to the December 5, 2017 judgment. The court explained that the December 5, 2017 judgment "will be stricken *if the Court determines that the plaintiffs' objections are valid*." (Italics added.) After hearing on plaintiffs' objections, the court ordered plaintiffs "to prepare and submit a [proposed] Judgment for the Court's consideration . . . . The court will make a determination regarding the appropriate Judgment after comparing the Judgments."

Plaintiffs' ensuing proposed judgment read in relevant part: "1. Plaintiffs shall take nothing by their Complaint. [¶] 2. Judgment is entered in favor of Defendants, and against Plaintiffs, on" each of the enumerated causes of action.

The trial court compared the two versions and on March 1, 2018, ruled that plaintiffs' proposed judgment "is not substantively different from the [version] filed on December 5, 2017" and ordered that the December 5, 2017 judgment would stand. The trial court denied plaintiffs' second motion to vacate the December 5, 2017 judgment. Plaintiffs' timely appeal ensued.

DISCUSSION

I. Plaintiffs' proposed judgment is inadequate

By way of their complaint, plaintiffs sought to quiet title, a declaration, and an injunction.

Section 1060 of the Code of Civil Procedure provides in pertinent part that a party may bring an action for "declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property." It also provides that "the court may make a binding declaration of these rights or duties" (*ibid.*) and that the "declaration may be *either affirmative or negative in form and effect*." (*Ibid.*, italics added.) " 'In an action for declaratory relief, the proper function of the court is to make a full and complete declaration, *disposing of all questions* of rights, status or other legal relations encountered in construing the instrument before it.' " (*Amerson v. Christman* (1968) 261 Cal.App.2d 811, 823, italics added.)

Likewise, "[a] quiet title action seeks to declare the rights of the parties in realty. A trial court should ordinarily resolve such dispute. This accords with the rule that a trial court should

not dismiss a regular declaratory relief action when the plaintiff loses, but instead should issue a judgment *setting forth the declaration of rights and thus ending the controversy*. [Citations.] . . . ' "The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to." ' " (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 305, italics added; *City of Santa Maria v. Adam* (2016) 248 Cal.App.4th 504, 513.)

Plaintiffs sought to quiet title and repeatedly requested "a judicial determination of their rights and interests in and to" the alleged easements and of their right to use the two roads as public streets. Plaintiffs asked for a judicial declaration so that "plaintiffs may ascertain their rights and interests in and to their easement[s] over and across the defendants' properties" and "to remove any cloud upon the Scher Property."

Accordingly, the judgment proposed by plaintiffs is wholly inadequate. A statement merely that plaintiffs take nothing by their complaint and that judgment is entered in defendants' favor and against plaintiffs does *not* (1) meet the directives in our disposition,[3] (2) set forth a declaration of the parties' rights, (3) " ' "determine, as between the parties, all conflicting claims to the property in controversy," ' " nor (4) " ' "decree to each such

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[3] "[T]he terms of the remittitur define the trial court's jurisdiction to act. 'The order of the appellate court as stated in the remittitur, "is decisive of the character of the judgment to which the appellant is entitled." ' " (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774, fn. 5.)

interest or estate therein as he may be entitled to." ' " (*Western Aggregates, Inc. v. County of Yuba*, *supra*, 101 Cal.App.4th at p. 305.) Plaintiffs' proposed judgment does not begin to address the question of whether Henry Ridge Motorway and Gold Stone Road were dedicated to the public, an issue important enough to plaintiffs that they sought Supreme Court review.

We disagree with plaintiffs that the December 5, 2017 judgment granted defendants affirmative relief. The pleadings define the issues to be tried. (*Simons v. Ware* (2013) 213 Cal.App.4th 1035, 1048.) Plaintiffs sought to quiet title and declaratory and injunctive relief. Code of Civil Procedure section 1060 authorizes the trial court to determine the rights of the parties and make a declaration that is "either affirmative or negative in form and effect." The judgment here is negative in effect in that it declares that plaintiffs have no right or interest by easement or dedication to the public of any use across any of defendants' properties and along Henry Ridge Motorway and Gold Stone Road.

II. The December 5, 2017 judgment requires modification

Plaintiffs also contend that the December 5, 2017 judgment is unlawful because it is overbroad and adjudicates real property that was not subject to the lawsuit, e.g., "any other property owned by Plaintiffs," and established rights of people who were not parties to this lawsuit, e.g., plaintiffs' "tenants, guests, [or] invitees," and any other "member of the general public."

"In actions for declaratory relief, the court should attempt to do complete equity, resolving all questions actually involved in the case as between all of the respective parties." (*Amerson v. Christman*, *supra*, 261 Cal.App.2d at p. 823.) However, "[a] judgment outside the issues is not a mere irregularity; it is

extrajudicial and invalid." (*Orange County Water Dist. v. City of Colton* (1964) 226 Cal.App.2d 642, 649 (*City of Colton*); *C.J.A. Corp. v. Trans-Action Financial Corp*. (2001) 86 Cal.App.4th 664, 673.) Trial courts have no "jurisdiction to pass upon new and different issues based upon after-acquired rights." (*City of Colton*, at p. 649.) Moreover, "[a] court has no jurisdiction over an absent party and its judgment cannot bind him. [Citation.] This is true even though an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person." (*Wright v. Goleta Water Dist*. (1985) 174 Cal.App.3d 74, 88.)

The December 5, 2017 judgment, insofar as it purports to adjudicate the rights of any other property owned by Plaintiffs that was not subject of the lawsuit, is invalid.

As for the language, plaintiffs' tenants, guests, or invitees, such people were not parties to this action and were not mentioned in the complaint. We are unpersuaded by defendants' suggestion that plaintiffs cannot be heard to object to the language "[p]laintiffs' family, guests, and tenants" in the December 5, 2017 judgment because the original judgment, drafted by plaintiffs, included those words. The original judgment, which is now void, purported to *grant* easement rights to plaintiffs, their family, guests, and tenants. However, the obverse of that language is not accurate. That is, once the trial court declares pursuant to our disposition that plaintiffs have no easement rights in Henry Ridge Motorway and Gold Stone Road, logically, no one claiming under plaintiffs, such as their guests, tenants, and family, has any such rights either. Moreover, as we and the Supreme Court have made clear, *the two roads at issue*

were not dedicated to the public. As plaintiffs, their family, tenants, and guests are all members of the public, naming "family, tenants, and guests" in the final judgment is surplusage.

There is another reason that the judgment is overbroad. It declares in relevant part, "nor *any member of the general public*, has *any* right title, interest, or easement (whether in gross, appurtenant, by implied dedication, *or otherwise*), in, over across, or to that real property owned by defendants." (Italics added.) However, our opinion recognized irrevocable easements for pedestrian, hiking, and equestrian purposes across certain of defendants' properties. (*Scher I*, *supra*, B235892 at pp. 11–12.) As written, the judgment appears to improperly eliminate those recreational easements.

III. The judgment must be modified.

Necessarily, any judgment resulting from plaintiffs' complaint must include (1) the metes and bounds descriptions of the properties at issue, (2) a recognition of any existing easement for recreational pedestrian, hiking, or equestrian purposes, (3) a statement declaring that neither plaintiffs nor their two properties at issue in this action has any easement (whether equitable, express, implied, or by prescription) for access over or across, or for ingress or egress to and from, defendants' properties along Henry Ridge Motorway and Gold Stone Road, and (4) a statement declaring that Henry Ridge Motorway and Gold Stone Road were not dedicated to the public.

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court with directions to enter a new declaratory judgment in accordance with section III. of the Discussion. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

HANASONO, J.*

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