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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ALEXANDER C. BAKER,

Plaintiff and Appellant,

v.

LAURIE BROOKS JEFFERSON
et al.,

Defendants and
Respondents.

B279226

(Los Angeles County
Super. Ct. No. BC613536)

APPEAL from an order of the Superior Court of Los Angeles,
Dalila Corral Lyons, Judge. Affirmed.

Alexander C. Baker, in pro. per., for Plaintiff and Appellant.

Cole Pedroza, Curtis A. Cole, Cassidy C. Davenport; Susson,
Parrett & Odell, Steven R. Odell and Edward J. Schumann for
Defendant and Respondent Laurie Brooks Jefferson.

Devan Beck Law Group, Devan D. Beck and Matthew
Einhorn for Defendant and Respondent Clara Veseliza Baker.

Alexander C. Baker, representing himself, as he does again on appeal, attempted in three iterations of a complaint to assert causes of action against Laurie Brooks Jefferson, a therapist, and Clara Veseliza, his former wife, alleging they had conspired to interfere with his relationship with his daughters and to exclude him from the family home. The trial court sustained Jefferson's demurrer to the second amended complaint without leave to amend, granted the motion to strike the allegations as to Veseliza and entered a judgment of dismissal. Because Baker's claims are either precluded or arise from proceedings in the family court, which retains jurisdiction over matters involving custody and property division, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Baker's First Amended Complaint

Baker filed his original complaint on March 15, 2016. In a first amended complaint filed two months later on May 13, 2016, Baker alleged six causes of action, including professional negligence and intentional and negligent infliction of emotional distress against Jefferson, a licensed marriage and family therapist who had treated his daughters at the request of his wife. As a result of Jefferson's misconduct, Baker claimed to have suffered the loss of love, affection and contact with his daughters, as well as custody of his younger daughter, Jane Doe;¹ extreme emotional distress; and the loss of earnings and access to a recording studio he and Veseliza, both professional musicians, had added to their home.

¹ Baker's older daughter had turned 18 years old before this action was filed.

In this pleading Baker alleged that he and Veseliza had been married for 19 years and had two daughters. By 2010, after the marriage began to deteriorate, the couple agreed to live together platonically. Baker moved to the recording studio and had only limited access to the main house.

On June 18, 2014, after increasing tensions with his wife over what she perceived as his infidelity, Baker initiated divorce proceedings. In response Veseliza changed the locks on the family house and refused to give Baker a key. At this point Veseliza developed a plan to harm Baker by alienating the love and affection between Baker and his younger daughter. To accomplish this goal, Veseliza sought the cooperation of Jefferson, their older daughter's therapist; and in May 2015 Veseliza began taking the younger daughter for therapy sessions with Jefferson without Baker's knowledge.

As further alleged in the first amended complaint, in June 2015 Veseliza's attorneys in the dissolution proceeding submitted a declaration signed by Jefferson in support of Veseliza's request for sole legal custody of their younger daughter with supervised visitation by Baker.² The declaration stated Jefferson's opinion that the child was suffering from anxiety and related disorders. According to Jefferson, the child had reported she was afraid to be alone with her father, who said "mean things" to her about her

² The first amended complaint referred to the declaration as Exhibit A and incorporated some of its content, but the declaration itself is not attached to the copy contained in the record. Baker later asked the court to take judicial notice of the declaration under Evidence Code section 452, subdivision (d)(1). There is no question the trial court considered the declaration in ruling on the demurrer.

mother, confided to her about his problems, became emotional with her and showed inappropriate affection. While Jefferson acknowledged she had never met Baker, she stated she had been told he had a history of drug addiction that made it dangerous for the child to ride in a car with him and interfered with his ability to attend to his parental responsibilities. She concluded by stating her “professional opinion and recommendation that the visits remain monitored until the father obtains drug treatment and undergoes his own therapy. He does not have appropriate boundaries with the child and should not tell his child the problems he has in life.”

At a July 17, 2015 hearing on Veseliza’s petition for custody, the family court issued a temporary order granting legal and physical custody of Jane Doe to Veseliza, with visitation by Baker to be supervised by Veseliza.

The first amended complaint also alleged that, following the hearing Baker attended one of his older daughter’s therapy sessions conducted by Jefferson and participated in several court-ordered co-parenting sessions with Jefferson and Veseliza. According to Baker, at these sessions Jefferson exposed “her misandrist nature by indicating that fathers are unnecessary, especially to girls and young women.”

Based on these facts, Baker alleged Jefferson had violated her professional duties to Jane Doe and, by extension, to Baker as her father. Baker alleged Jefferson had violated multiple provisions of the California Association of Marriage and Family Therapists (CAMFT) Code of Ethics³ by engaging in dual roles as

³ CAMFT is an independent professional organization representing the interests of licensed marriage and family therapists. The CAMFT Code of Ethics is a professional, not

a therapist and custody evaluator, providing an opinion about Baker when she had never evaluated him, failing to disclose conflicts of interest in treating different members of the family and providing untruthful testimony. He also provided an expert declaration from a psychologist and ethicist concluding Jefferson, as revealed in her declaration, had violated the CAMFT Code of Ethics.

Jefferson demurred to the first amended complaint, principally on the ground Baker's claims arose from Jefferson's submission of the declaration, a privileged act under Civil Code section 47, subdivision (b).⁴ On June 24, 2016 the trial court sustained Jefferson's demurrer to all causes of action with leave to amend, ruling that Jefferson's actions were protected by the litigation privilege. Focusing on Baker's assertion he had been harmed by Jefferson's failure to disclose conflicts of interest, the court stated, "[T]his court believes that [Baker] is merely grasping for straws in an attempt to find any basis to sue [Jefferson]. He now recognizes that he cannot legally sue for any of her actions which were protected by the litigation privilege. He appears to now be searching for some cause of action which occurs 'outside the litigation privilege.'" Citing the liberal rule for allowing leave to amend, the trial court granted Baker leave to amend but specifically prohibited him from attempting to allege

statutory, code of ethics and standards by which CAMFT member marriage and family therapists are expected to abide. (See https://www.camft.org/COS/Code_of_Ethics/COS/About_CAMFT/Code_of_Ethics/COE.aspx?hkey=ebb47c93-9f1a-4f4d-af57-0802161257cd, as of November 7, 2017.)

⁴ Statutory references are to this code unless otherwise stated.

any prior cause of action found to be barred by the litigation privilege.⁵

2. The Second Amended Complaint

Baker's second amended complaint reasserted three causes of action for professional negligence, as well as the causes of action for intentional and negligent infliction of emotional distress, and added causes of action for conversion, conspiracy to commit intentional infliction of emotional distress and conspiracy to commit conversion. Baker added Veseliza as a defendant to all but the professional negligence causes of action. In an introductory summary of his claims, he alleged Jefferson and Veseliza had "waged a scurrilous campaign of character assassination against Mr. Baker that was calculated to, and was successful in alienating his daughters' love and affection" and "also succeeded in executing a scheme to exclude Mr. Baker from the family house and the adjacent family recording studio, which was Mr. Baker's means of livelihood."

In support of the professional negligence claims Baker now alleged Jefferson had become his therapist after he asked his older daughter to allow him to attend one of her sessions with Jefferson. In subsequent court-ordered sessions with Jefferson and Veseliza, Baker claimed he "got to know Ms. Jefferson and her misandrist worldview," concluding that she viewed all men as "inherently bad and dangerous." According to Baker, "Ms. Jefferson taught both of the Bakers' daughters that they should fear their father, and to be 'independent' and 'distant'".

⁵ On August 22, 2016 Baker filed a notice of appeal from this order. That appeal was dismissed pursuant to California Rules of Court, rule 8.100(c) (failure to pay filing fee) on October 3, 2016.

from him.” Baker alleged that, when he asked to discuss the false representations made by Veseliza, Jefferson suggested she “had the power to control” his ability to see his younger daughter and changed the subject.

In support of his new conversion claim, Baker alleged Veseliza had substantially interfered with his property rights when she changed the locks on the family home and refused to share the alarm system code: As a result, Veseliza retained control of the property, and he was allowed inside by permission only and was often excluded. On several occasions Veseliza called the police, resulting in Baker’s eviction from the home and depriving him of access to the recording studio, thus causing him substantial financial and emotional harm. “Jefferson agreed to participate in the scheme by instructing and encouraging both Bakers’ children to exclude Mr. Baker from the house, according to the agreement reached with [Veseliza].”

3. The Trial Court’s Order Sustaining Jefferson’s Demurrer to the Second Amended Complaint and Striking the Allegations Against Veseliza

Jefferson, joined by Veseliza, demurred to all causes of action in the second amended complaint and moved to strike all causes of action against Veseliza. On September 22, 2016 the trial court sustained the demurrers without leave to amend and struck all causes of action against Veseliza. The court ruled that Baker’s additional causes of action against Jefferson and the addition of Veseliza as a defendant exceeded the scope of permissible amendment previously granted by the court. (See *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023 [following an order sustaining a demurrer a plaintiff may amend the complaint only as authorized by the court’s order and

may not add new causes of action or defendants without permission of the court].) The court also ruled Baker's causes of action based on the loss of his relationship with his daughters were barred by section 43.5, the anti-heart-balm statute. Further, Jefferson was not acting as Baker's therapist when she provided the allegedly tortious services to his daughters and therefore owed no duty to Baker. The court additionally ruled that, to the extent Baker's causes of action were based on Jefferson's conduct during the course of dissolution proceedings, Jefferson's conduct fell within the scope of litigation privilege and the questions of custody and property division were subject to the jurisdiction of the family court in the dissolution proceeding.

DISCUSSION

1. *Standard of Review*

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court's ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We liberally construe the pleading with a view to substantial justice between the parties (Code Civ. Proc., § 452; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340; see *Schifando*, at p. 1081 [complaint must be read in context and

given a reasonable interpretation]); but, “[u]nder the doctrine of truthful pleading, the courts ‘will not close their eyes to situations where a complaint contains allegations of facts inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.’” (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; see *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 “[w]hile the ‘allegations [of a complaint] must be accepted as true for purposes of demurer,’ the ‘facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence”]; *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83 “[i]f the allegations in the complaint conflict with the exhibits, we rely on and accept as true the contents of the exhibits”].)

Although a general demurrer does not ordinarily reach affirmative defenses, it “will lie where the complaint ‘has included allegations that *clearly* disclose some defense or bar to recovery.’” (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 183; accord, *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 725; *Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1406; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 224.) “Thus, a demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense.” (*Casterson*, at p. 183; accord, *Ivanoff*, at p. 725; *Favila*, at p. 224.)

2. *The Trial Court Properly Sustained Jefferson's Demurrer to the Second Amended Complaint*

a. *Baker's causes of action based on the alienation of his daughters' love and affection are not actionable*

The trial court ruled Baker's causes of action based on allegations Jefferson had conspired with Veseliza to alienate the affection of his daughters were barred by section 43.5, known as the anti-heart-balm statute. Section 43.5 provides, "No cause of action arises for: [¶] (a) Alienation of affection. [¶] (b) Criminal conversation. [¶] (c) Seduction of a person over the age of legal consent. [¶] (d) Breach of promise of marriage." The statute "creates a blanket immunization from liability for the conduct it protects unless such conduct 'breaches a duty of care independent of the causes of action barred therein.'" (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 267; accord, *Smith v. Pust* (1993) 19 Cal.App.4th 263, 269; see *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1269 [allegations of betrayal and heartless disregard for the feelings of others are not ones for which the courts provide redress].)

We have found no California authority applying section 43.5 to the parent-child relationship. Nonetheless, several courts have recognized that a cause of action does not lie for loss or injury to parental or filial affection. (See *Borer v. American Airlines, Inc.* (1977) 19 Cal.3d 441, 447 ["the inadequacy of monetary damages to make whole the loss suffered, considered in light of the social cost of paying such awards, constitutes a strong reason for refusing to recognize the asserted claim"]; accord, *Baxter v. Superior Court* (1977) 19 Cal.3d 461, 464; *Foy v. Greenblott* (1983) 141 Cal.App.3d 1, 7.) Each of these cases involved claims by parents against third

parties alleged to have caused the loss of filial consortium resulting from the child's injury or death.

Discussing these cases in an action brought by a mother against her ex-husband in part for alienating the affections of their son (*In re Marriage of Segel* (1986) 179 Cal.App.3d 602 (*Segel*)), Justice Lui, writing for Division Three of this court, explained their unifying principle: "These decisions . . . indicate a public policy against awarding damages in loss of filial consortium situations except in the most narrow instances of providing a remedy for specific and measurable economic losses; but not in situations where the claim involves intangible injuries to a parent-child relationship." (*Id.* at p. 608.) The court continued, "[T]he judicial recognition of a cause of action for loss of filial consortium would undermine the purposes of the Family Law Act which is designed, among other things, to regulate and supervise the care, custody and financial support of minor children whose parents are the subject of dissolution proceedings. The recognition of this cause of action would create an unwarranted remedy of monetary damages and should be rejected. [¶] A parent who has difficulties concerning the rights of visitation should be directed to the family law court for a speedy resolution of these disputes. Otherwise, disputes over visitations could be used as a vehicle for claiming monetary damages, a rather distasteful resolution of a problem which is supposed to involve primarily the best interests of the child, and not the parent." (*Id.* at p. 609.)

The alienation of his younger daughter's affection lies at the root of Baker's action. Baker admitted as much in summarizing his claims: "[Jefferson and Veseliza] waged a scurrilous campaign of character assassination against Mr. Baker

that was calculated, and was successful in alienating his daughters' love and affection." Although Jefferson's actions were the principal focus of the second amended complaint, the conspiracy Baker alleged between Jefferson and Veseliza arose during a custody battle. As in *Segel*, the parties were subject to the jurisdiction of the family court; we agree with *Segel* that the family court is the proper venue to address those issues, paramount among which is the child's best interests. (See Note, *The Kids Are Not All Right: Using the Best Interest Standard To Prevent Parental Alienation and a Therapeutic Intervention Approach To Provide Relief* (2015) 56 B.C. L.Rev. 803 [arguing that family law courts provide the best fora to address parental alienation and children's best interests].)

Accordingly, to the extent Baker seeks compensation for the intangible loss of his daughter's love and affection, his second amended complaint fails to state a justiciable cause of action; and his concerns are appropriately addressed in the family court.

b. *Baker's property claims are also subject to the jurisdiction of the family court*

The trial court also properly ruled that Baker's alleged financial injuries from loss of access to the recording studio, including his causes of action for conversion and conspiracy to commit conversion, were subject to priority jurisdiction in the family court. As explained in *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450, "[W]here a proceeding has been . . . assigned for hearing and determination to one department of the superior court by the presiding judge . . . and the proceeding . . . has not been finally disposed of[,]. . . it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the

department to which the proceeding has been so assigned. . . . If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much confusion.” [¶] ‘One department of the superior court cannot enjoin, restrain, or otherwise interfere with the judicial act of another department of the superior court. Even between superior courts of different counties, having coequal jurisdiction over a matter, *the first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction.* [¶] A judgment rendered in one department of the superior court is binding on that matter upon all other departments until such time as the judgment is overturned.” (Citations omitted; see *Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 25-26 “[a] recurrent theme in the family law opinions of this court is the disfavoring of civil actions which are really nothing more than reruns of a family law case”] (*Neal*); *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961-962 “[a]fter a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division”].)

In *Neal*, for instance, the court rejected the efforts of an ex-husband to sue his former wife for breach of contract, fraud, abuse of process and declaratory relief following her attempt to collect on sums awarded by the family court. (*Neal, supra*, 90 Cal.App.4th at p. 24.) The court observed that almost all events occurring in family law litigation can be reframed as civil law actions and that it is “incumbent on courts to examine the substance of claims, not just their nominal headings.” (*Id.* at p. 25; see *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 393

[former wife's lawsuit against ex-husband for failing to make payments under the terms of a family law court order, described as "a textbook example of an improper attempt to wage 'family law . . . by other means'"]; *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1483-1484 [civil law and motion department had no authority to order the sale of the family home based on husband's accrued support arrearages when the family law court still had jurisdiction to divide the community interest in that home].)

In this case Baker contests the trial court's holding that his property rights were conclusively determined in the dissolution proceedings, arguing that "the trial court simply made this up." Instead, Baker contends, the family court awarded Veseliza exclusive use of the family home on a temporary basis. Baker, however, has missed the point. The family court assumed jurisdiction over custody and property issues when Baker filed his dissolution petition in June 2014, and the case remains active. Any allegedly inappropriate assistance Jefferson provided Veseliza in convincing their daughters to exclude Baker from the house is a matter for the family court to consider in its rulings on interim access to, and final division of, the property.

c. Jefferson did not assume an independent duty to Baker

To avoid the scope of the foregoing doctrines, Baker argues Jefferson assumed an independent duty of care to him by treating his minor daughter, when she allowed him to participate in therapy with his daughter, and when she presided over court-ordered co-parenting counseling with his wife. As to the first argument, Baker has failed to identify any authority for the proposition Jefferson owed an independent duty to him because

his daughter was her client. No such duty exists. (See, e.g., *Huggins v. Longs Drug Stores California, Inc.* (1993) 6 Cal.4th 124, 132 [parent of child patient may not recover as a direct victim for negligence of pharmacist or other health care providers]; *Schwarz v. Regents of University of California* (1990) 226 Cal.App.3d 149, 161-163 [father denied recovery for emotional distress as the alleged direct victim of psychotherapist retained by father to treat his son and who facilitated mother's removal of son to London]; see also *Schwarz*, at p. 168 ["the simple existence of a contract between a parent and a medical caregiver to provide medical treatment for a child is not in itself sufficient to impose on the caregiver a duty of care owed to the parent"].)

Baker's own allegations are fatal to his second argument. Baker alleged he initiated the first encounter with Jefferson when he asked his older daughter to allow him to accompany her to one of her sessions with Jefferson. That interaction involved therapy for his daughter. There is no allegation Jefferson agreed to act as Baker's therapist.⁶

Finally, even if Jefferson assumed a duty to Baker during the co-parenting sessions in August and September 2015, Baker's identification of Jefferson's June 22, 2015 declaration as evidence of the injury Jefferson had caused to his relationship with his younger daughter demonstrated the purported alienation of her

⁶ According to the second amended complaint, Jefferson failed to disclose any conflict of interest in seeing Baker at the same time she was counseling other members of his family. Absent any indication she had assumed an independent duty to Baker, no conflict existed; and Jefferson would have had no reason to make any such disclosure.

affection occurred well before Baker met with Jefferson in any capacity. As a consequence, nothing in the second amended complaint supports Baker's allegation Jefferson assumed an independent duty to him that she violated during her treatment of his daughters.⁷

3. *The Motion To Strike Was Properly Granted*

"Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. [Citation.] The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Harris v. Wachovia Mortgage, FSB*, *supra*, 185 Cal.App.4th at p. 1023; accord, *Gilkyson v. Disney Enterprises, Inc.*, *supra*, 244 Cal.App.4th at p. 1347.) The trial court granted Jefferson's motion to strike Baker's three new causes of action for conversion, conspiracy to commit intentional infliction of emotional distress and conspiracy to commit conversion, as well as the allegations adding Veseliza as a defendant. Not only was the trial court's ruling justified under *Harris*, but also Baker's additional causes of action, including those against Veseliza, fail for the reasons discussed.

4. *Leave To Amend Was Properly Denied*

"Where the complaint is defective, "[i]n the furtherance of justice great liberality should be exercised in permitting a

⁷ Because of our conclusion the causes of action and remedies sought in the second amended complaint are barred, we need not address Baker's contention he successfully framed his allegations to circumvent the bar of the litigation privilege.

plaintiff to amend his [or her] complaint.”” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.) We determine whether the plaintiff has shown “in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “[L]eave to amend should *not* be granted where . . . amendment would be futile.” (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685; accord, *Ivanoff v. Bank of America, N.A.*, *supra*, 9 Cal.App.5th at p. 726; see generally *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 373-374.)

Baker was allowed an opportunity to amend after the trial court sustained the demurrer to his first amended complaint. He failed to address the concerns of the court, which again sustained demurrers to the second amended complaint and denied leave to amend. On appeal he has failed to show how he could amend his causes of action to avoid the issues identified. Accordingly, leave to amend was properly denied.

DISPOSITION

The judgment is affirmed. Jefferson is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

MENETREZ, J.*

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