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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

AMIR MOSTAFAVI,

Plaintiff and Appellant,

v.

ERIC KINGSLEY et al.,

Defendants and Respondents.

B286081

(Los Angeles County  
Super. Ct. No. BC586706)

APPEAL from an order of the Superior Court of Los Angeles County. Elizabeth Allen White, Judge. Dismissed.

Amir Mostafavi, in pro. per., for Plaintiff and Appellant.

Liang Ly LLP, Jason L. Liang and John Khai Ly for  
Defendants and Respondents.

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Plaintiff Amir Mostafavi appeals from an order granting in part a special motion to strike his complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16).<sup>1</sup> He also challenges the court’s subsequent award of attorney fees to defendants Eric Kingsley and Kingsley & Kingsley, APC (together, Defendants). Mostafavi filed the notice of appeal more than two years after the court entered its order on the anti-SLAPP motion, which was untimely. He also failed to identify the attorney fees order in the notice of appeal. Accordingly, we dismiss the appeal.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mostafavi is an attorney. In 2012, he began representing several clients in a wage and hour lawsuit against their former employer. A few weeks before trial, Mostafavi reached out to Defendants—who are experienced trial attorneys—for assistance in the event he was unable to settle the case. Mostafavi and Defendants entered into a fee sharing agreement, whereby they would divide any potential recovery of attorney fees and costs.

The case settled before trial, in large part because of Defendants’ efforts. Three of the clients then retained Defendants to represent them in a fee dispute against Mostafavi. The parties arbitrated the dispute, which resulted in a non-binding award against Mostafavi and a finding that his fees were “grossly excessive.”

#### *Complaint and Anti-SLAPP Motion*

On June 30, 2015, Mostafavi filed a complaint against Defendants, asserting causes of action for fraud or deceit, breach of contract, breach of the covenant of good faith and fair dealing, conversion, declaratory relief, fraudulent inducement, and

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<sup>1</sup> All future unspecified statutory references are to the Code of Civil Procedure.

intentional infliction of emotional distress. Mostafavi's claims were premised on allegations that, among other things, Defendants falsely promised to take the underlying case to trial, took active steps to avoid trial, refused to release attorney fees and costs to Mostafavi after the case settled, and conspired with the clients to bring a fee dispute against Mostafavi.

Defendants responded to the complaint by filing a special motion to strike pursuant to the anti-SLAPP statute (§ 425.16). The court issued a tentative ruling striking Mostafavi's causes of action for fraud, fraudulent inducement, breach of contract, and breach of the covenant of good faith and fair dealing. The court tentatively denied Defendants' motion with respect to the remaining causes of action. The tentative decision further stated Defendants "may bring a noticed-motion to seek a determination as to whether [they] are entitled to attorneys fees and, if so, in what amount. The Court is not making a prevailing party determination at this time."

At the conclusion of the hearing on October 21, 2015, the court indicated it would adopt its tentative ruling, and the parties waived notice. At Defendants' request, and without objection from Mostafavi, the court stayed the case pending arbitration of a related action involving Mostafavi and his former clients. The court set a status conference for April 18, 2016.

#### *Motion for Attorney Fees*

On December 21, 2015, Defendants filed a motion for attorney fees incurred in connection with their anti-SLAPP motion (see § 425.16, subd. (c)). On February 22, 2017, the court issued a tentative ruling granting the motion. By stipulation of the parties, the hearing on the motion was continued to May 30, 2017. On June 26, 2017, the court filed a signed order granting

Defendants' motion and awarding them \$10,158.75.

*Notice of Appeal*

On November 1, 2017, Mostafavi filed a notice of appeal stating he was appealing an order on a "Special Motion to Strike" entered on September 6, 2017.<sup>2</sup>

**DISCUSSION**

**I. Mostafavi's Notice of Appeal Was Untimely**

Defendants assert we lack jurisdiction to consider Mostafavi's appeal of the anti-SLAPP order because his notice of appeal was untimely. We agree.

"The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal." (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56; see also *Stuart Whitman, Inc. v. Cataldo* (1986) 180 Cal.App.3d 1109, 1113 [an appellate court has "no discretion" to entertain an untimely appeal, and "must" dismiss the appeal]; *Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1107.) Stated simply, an aggrieved party that fails to file a timely appeal forever loses the opportunity to obtain appellate review. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.)

California Rules of Court, rule 8.104(a)(1), requires a notice of appeal be filed on or before the earlier of three dates: "(A) 60 days after the superior court clerk serves on the party filing the

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<sup>2</sup> It does not appear the court entered an order in this case on September 6, 2017. It seems the date may refer to the entry of judgment in a related case between Mostafavi and his former clients. Mostafavi does not explain why he included that date in his notice of appeal.

notice of appeal a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, showing the date either was served; (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or (C) 180 days after entry of judgment.” (Cal. Rules of Court, rule 8.104(a)(1).) Although the rule refers to judgments, the deadlines apply equally to appealable orders. (*Id.*, rule 8.104(e).)

If the parties waive notice of the court’s order, as they did here, “the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed-endorsed copy of the judgment to start the time period under (1)(A) or (B).” (Cal. Rules of Court, rule 8.104(a)(3).) It does not appear that Mostafavi was served notice of entry of the order, or a file-endorsed copy of the order. As a result, to be timely, Mostafavi was required to file his notice of appeal no later than 180 days after entry of the order.

The “entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes.” (Cal. Rules of Court, rule 8.104(c)(2).)<sup>3</sup> “The ‘minutes of the court’ include the records of the proceedings entered by the judge or courtroom clerk, showing what action was taken and the date it was taken (Gov. Code, § 69844) . . . .” (*Lauren H. v. Kannappan* (2002) 96 Cal.App.4th 834, 839, fn. 4.) There are “three elements essential to the entry of an order in the permanent minutes—to

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<sup>3</sup> If an order is not entered in the minutes, the order is entered when a signed order is filed. (Cal. Rules of Court, rule 8.104(c)(3).) The record does not contain a signed order on the anti-SLAPP motion.

wit, preparation of a written order, recordation of its date and substance in a permanent record, and delivery to the custodian of records.” (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 671.)

Here, the record shows the order on Defendants’ anti-SLAPP motion was entered on October 21, 2015. After hearing oral argument, the court indicated it would adopt its tentative ruling as its final order.<sup>4</sup> The record includes a copy of the written tentative ruling with the word “tentative” struck from the title, making it clear the court intended the ruling to be its final order. The document is dated October 21, 2015, and sets forth the substance of the court’s order granting in part Defendants’ anti-SLAPP motion. It does not mandate the preparation of a formal written order. The document also contains a stamp indicating it was filed by the deputy clerk, which is sufficient to show permanent delivery to the custodian of records. (*Fergus v. Songer* (2007) 150 Cal.App.4th 552, 565.)

We may presume that after receiving the document, the deputy clerk took any additional steps necessary to enter the order into the minutes. The clerk is required to “keep the minutes and other records of the court, entering at length within the time specified by law, or forthwith if no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made.” (Gov. Code, § 69844.) There is a presumption that an “official duty has

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<sup>4</sup> The court did not explicitly state it was adopting its tentative ruling. Nonetheless, the court’s intention is clear from our review of the reporter’s transcript of the hearing. The parties also clearly had the same understanding, as they each agreed to waive notice.

been regularly performed,” (Evid. Code, § 664), meaning we may presume the clerk entered the court’s order into the minutes “forthwith.” (See *Fergus v. Songer*, *supra*, 150 Cal.App.4th at p. 565 [presuming the deputy clerk entered an order into the permanent minutes].) Consistent with this presumption, the register of actions contains an October 21, 2015 entry referring to an order on Defendants’ anti-SLAPP motion.

This record is sufficient to show the court’s order was entered on October 21, 2015. Mostafavi was therefore required to file his notice of appeal no later than April 18, 2016, which was 180 days after the date of entry. (Cal. Rules of Court, rule 8.104(a)(1)(C).) Mostafavi, however, filed the notice of appeal on November 1, 2017, more than a year and a half after the deadline. The notice was untimely, and we lack jurisdiction to consider Mostafavi’s challenge to the court’s order on the anti-SLAPP motion.

Although far from clear, Mostafavi seems to argue the time to file a notice of appeal did not begin to run because the court’s tentative ruling was never entered as a final order of the court. In support, he points to the absence in the record of a minute order expressly adopting or incorporating the tentative ruling, as well as the lack of a signed order. We are not persuaded.

The absence of a minute order expressly adopting or incorporating the tentative ruling is not dispositive. As discussed above, the record shows the trial court adopted the tentative ruling as its final order, and we may presume the clerk performed its statutory duty of entering the order into the minutes. Moreover, because the order did not direct preparation of a separate, formal order, the time to file an appeal began to run when the order was entered in the minutes. (Cal. Rules of

Court, rule 8.104(c)(2).) The lack of a signed order is irrelevant. (See *Simmons v. Superior Court* (1959) 52 Cal.2d 373, 379 [“entry in the minutes is the equivalent of signing a formal order and filing it with the clerk”]; *Badella v. Miller* (1955) 44 Cal.2d 81, 85.)

In any event, even if Mostafavi is correct, we would nonetheless dismiss his appeal as premature. Tentative decisions are not appealable (*In re Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 794), and an order is generally not effective until entered in the minutes or signed and filed (*Jablon v. Henneberger* (1949) 33 Cal.2d 773, 775 [“It is the general rule that an order is ineffective unless filed with the clerk or entered in the minutes.”]; *Shpiller v. Harry C’s Redlands* (1993) 13 Cal.App.4th 1177, 1179 [by definition, an order must be “either entered in the court’s permanent minutes or signed by the judge and stamped ‘filed’ ”]). Consequently, if a final order on the anti-SLAPP motion was never entered in the minutes or signed and filed—as Mostafavi seems to be suggesting—any purported appeal would be premature and subject to dismissal. (See *Jordan v. Malone* (1992) 5 Cal.App.4th 18, 23 [dismissing appeal where no formal judgment had yet been entered]; *Jackson v. Thompson* (1941) 43 Cal.App.2d 150, 152 [“That no appeal can be taken from an order or judgment until it is formally entered in the minutes, is and for a long time has been the unquestioned law of this state.”]; see also Cal. Rules of Court, rule 8.104(d) [court may consider premature notice of appealed to have been filed immediately after *entry of the appealable order*].) Indeed, until an order is entered, there is simply nothing from which an appeal can be taken.<sup>5</sup>

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<sup>5</sup> We decline to consider Mostafavi’s suggestion, made in



## II. We Lack Jurisdiction to Consider Mostafavi's Challenge to the Attorney Fees Order

We also lack jurisdiction to consider Mostafavi's challenge to the award of attorney fees, because he failed to appeal that order.<sup>6 7</sup>

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passing, that the time to file the notice of appeal was tolled while the case was stayed. Mostafavi provides no analysis or citations to authority in support of his contention, and has therefore forfeited the issue. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.”]; *Loranger v. Jones* (2010) 184 Cal.App.4th 847, 858, fn. 9; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1240, fn. 18.)

<sup>6</sup> We invited the parties to submit supplemental letter briefs on this issue, which they did on November 7, 2018.

<sup>7</sup> Whether an order awarding attorney fees incurred in connection with a partially-successful anti-SLAPP motion is directly appealable is unsettled. (Compare *Doe v. Luster* (2006) 145 Cal.App.4th 139, 145–146 [interlocutory order denying or awarding attorney fees is not immediately appealable] with *Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 275 [“it would be absurd to defer the issue of attorney fees until a future date, resulting in the probable waste of judicial resources”] and *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 781 [reviewing pre-judgment attorney fees order under the collateral order doctrine].) Confusingly, Mostafavi contends the order is both an appealable order under the collateral order doctrine, and a non-appealable order. We need not consider that issue, however, because Mostafavi failed to appeal the attorney fees order.

Our jurisdiction is limited in scope to the notice of appeal and order from which an appeal is taken. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846.) “ ‘ “Where several judgments and/or orders occurring close in time are separately appealable . . . each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal.” ’ [Citations.]” (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239.) As a result, a notice of appeal of an order on an anti-SLAPP motion does not confer appellate jurisdiction over a subsequent order awarding attorney fees. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 632.) “[A] party must, at minimum, file a notice of appeal from the order on the motion for attorney fees itself, or from a final appealable judgment entered thereafter.” (*Ibid.*)

Although we must liberally construe notices of appeal, (Cal. Rules of Court, rule 8.100(a)(2)), “ ‘ “a notice of appeal will not be considered adequate if it completely omits any reference to the judgment [or order] being appealed.” ’ [Citation.]” (*Colony Hill v. Ghamaty* (2006) 143 Cal.App.4th 1156, 1172.) “The rule favoring appealability in cases of ambiguity cannot apply where there is a clear intention to appeal from only part of the judgment or one of two separate appealable judgments or orders.” (*Norman I. Krug Real Estate Investments, Inc. v. Praszker, supra*, 220 Cal.App.3d at p. 47.)

Here, Mostafavi’s November 1, 2017 notice of appeal states only that he is appealing an order on a “Special Motion to Strike.” The notice makes no reference, whatsoever, to the order awarding attorney fees.<sup>8</sup> Moreover, consistent with an intention

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<sup>8</sup> Mostafavi represents that he filed a notice of errata in the

to appeal only the anti-SLAPP order, Mostafavi requested a transcript of the hearing on the anti-SLAPP motion be included in the record, but did not request inclusion of the hearing on the motion for attorney fees.

Mostafavi concedes that he did not file a notice of appeal of the attorney fees order, but insists he cured the defect by referring to the order in his subsequently filed case information statement. The case information statement, however, refers only to a September 6, 2017 judgment, which appears to have been entered in a separate lawsuit. It makes no reference to the court's June 26, 2017 attorney fees order.

We also cannot construe Mostafavi's appeal of the anti-SLAPP order as somehow encompassing an appeal of the attorney fees order. The court explicitly stated in its anti-SLAPP order that it was not making any findings or orders with respect to attorney fees. The court ultimately decided the issue nearly two years later, in response to Defendants' separately noticed motion. On this record, there is simply no basis to find that Mostafavi appealed the attorney fees order, no matter how liberally we construe the notice of appeal. (See *Martin v. Inland Empire Utilities Agency*, *supra*, 198 Cal.App.4th at p. 632 [finding no jurisdiction to review attorney fees order where notice of appeal referred only to an anti-SLAPP order]; *cf. Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661 [it would be "beyond liberal construction" to construe notice of appeal identifying an attorney fees order as an appeal of an anti-SLAPP order]; *Ellis v. Ellis*, *supra*, 235 Cal.App.4th at p. 846 [refusing to liberally construe

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superior court to correct an error in his notice of appeal. The notice of errata is not in the record, and Mostafavi does not contend that it made reference to the attorney fees order.

notice of appeal to include second judgment where “every indication in the record” showed appellant intended to appeal only one judgment].)

**DISPOSITION**

The appeal is dismissed. Defendants are awarded their costs on appeal.

BIGELOW, P.J.

We concur:

GRIMES, J.

STRATTON, J.