Filed 9/27/19 Raza v. Spain CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TAIMUR RAZA, Plaintiff and Appellant, v. DANIEL D. SPAIN et al., Defendants and Respondents.	B290679 (Los Angeles County Super. Ct. No. SC122344)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Reversed.

Graham Law Corporation and Alice M. Graham for Plaintiff and Appellant.

Paul F. Sullivan & Associates and Susan Rousier for Defendants and Respondents.

Plaintiff and appellant Taimur Raza (plaintiff)[1] appeals from the judgment in favor of his former neighbors, defendants and respondents Daniel Spain and Michael Randall (defendants).

Legal proceedings between the parties began with a separate lawsuit (*Raza v. Spain et al.*, case No. BC205194 (*Raza I*)), in which plaintiff alleged that defendants' backyard landscaping caused water to intrude onto plaintiff's property, damaging his garage and a boundary wall. The trial court struck a claim for punitive damages as "vague and conclusory." Plaintiff sought leave to file an amended complaint alleging that the garage damage was part of a larger pattern of harassing and threatening conduct by defendants that included berating plaintiff with discriminatory insults and poisoning his two dogs. The trial court denied leave to amend, finding that plaintiff had failed to explain why he had not asserted the new allegations in his original complaint.

Plaintiff then filed the instant action, *Raza II*, which largely asserted the claims from his proposed amended complaint in *Raza I*, including the allegations of verbal harassment and defendants' poisoning plaintiff's two dogs. Plaintiff moved three times to consolidate *Raza I* and *Raza II* but the trial court denied the motions.

After the trial court ruled on several motions in limine in *Raza I* that, among other things, barred plaintiff from introducing evidence in *Raza I* relevant to the claims in *Raza II*,

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[1] Plaintiff died while this appeal was pending. His mother, Hali Jilani, substituted in as plaintiff's successor in interest. To prevent confusion, however, we refer to Taimur Raza as the plaintiff given that he brought the claims in *Raza I* and *Raza II* and is the subject of those claims.

plaintiff dismissed *Raza I* with prejudice to facilitate appeal.[2] *Raza II* proceeded to trial, resulting in a judgment in favor of defendants.

In the instant appeal, plaintiff challenges the trial court's grant of defendants' motion in limine precluding him from introducing evidence relevant to the claims he dismissed in *Raza I*, namely that defendants caused water to intrude into his property and damage his garage. We agree the trial court erred. Although plaintiff did not seek damages for his garage in *Raza II*, the garage allegations were relevant to establish defendants' purported pattern of harassing and threatening conduct towards plaintiff. Plaintiff additionally was prejudiced when, despite the grant of their motion in limine, defendants themselves raised an issue from *Raza I* when cross-examining plaintiff, then called an expert to discredit plaintiff on that issue to undercut his credibility.

Because the trial court's error requires reversal, we do not address plaintiff's other challenges.

PROCEDURAL BACKGROUND

A. *Raza I*

On March 5, 2013, plaintiff filed *Raza I* against defendants, alleging causes of action for alteration of natural flow of surface water, trespass, nuisance, and negligence. Plaintiff alleged that defendants, who owned the property adjoining his, had

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[2] We address the appeal in *Raza I* in a separate opinion, holding that the trial court abused its discretion in not granting plaintiff leave to amend his complaint. (See *Raza v. Spain et al.* (Sept. 27, 2019, B278096 [nonpub. opn.].)

"landscaped, graded and irrigated their backyard so as to alter and disturb the natural flow of surface water," resulting in water flowing onto plaintiff's property and damaging his garage and a wall along his property line. The complaint included a prayer for punitive damages.

On August 27, 2013, on defendants' motion, the trial court struck the allegations supporting punitive damages as "vague and conclusory." The trial court stated that its "ruling is without prejudice to plaintiff bringing a motion for leave to amend at such time as discovery discloses facts which would support a claim for punitive damages."

On January 22, 2014, plaintiff filed a motion for leave to file a first amended complaint. The proposed first amended complaint, which added causes of action for intentional and negligent infliction of emotional distress, alleged that "[d]efendants' failure to address the water intrusion problem is part of a pattern of conduct towards plaintiff" that plaintiff characterized as "hostile, discriminatory and threatening." Plaintiff alleged other acts by defendants purportedly within this "pattern of conduct," including "a. Hurling insults at plaintiff based on race, religion and national origin including but not limited to asserting plaintiff was a foreigner from 'the sandbox' and had no right to wear an American military uniform . . . ; [¶] b. Making groundless complaints to third parties about plaintiff; [¶] c. Calling plaintiff insulting and/or discriminatory names including but not limited to 'greaseball motherfucker'; [¶] d. Poisoning plaintiff's two pet dogs, one of which was a young puppy, resulting in harm to one dog and the death of the puppy; [¶] e. Taunting plaintiff the day after the poisoning of

the dogs by stating that defendant Spain 'hopes' plaintiff 'realizes who he is messing with.' "

The trial court denied leave to amend, finding that plaintiff had known of the facts underlying the new causes of action "from the beginning," yet had failed to explain why he had not asserted the causes of action earlier.

B. Plaintiff files *Raza II*

On April 3, 2014, plaintiff filed the instant matter, *Raza II*, against defendants, with a complaint largely resembling the proposed first amended complaint in *Raza I*. The complaint alleged causes of action for nuisance, trespass, and intentional infliction of emotional distress. Plaintiff alleged defendants had "intentionally engaged in a pattern of conduct towards plaintiff that is hostile, discriminatory and threatening." In addition to repeating the allegations against defendants from the proposed first amended complaint in *Raza I* concerning discriminatory insults, groundless complaints, and poisoning plaintiff's dogs, the new complaint alleged as examples of defendants' "pattern of conduct" the following: causing water to flow into plaintiff's garage, aiming their sprinklers at his property, complaining to city departments about plaintiff, "staring at plaintiff," and "complaining to plaintiff about trivial matters."

Plaintiff alleged that "[a]s a proximate result of defendants' acts and ongoing bad treatment of plaintiff, plaintiff ultimately decided to sell his home at a substantial discount and flee the neighborhood." Plaintiff also claimed damages for deprivation of use, possession, and enjoyment of his property as well as "mental

anguish and distress, humiliation, fear and anxiety." Plaintiff included a prayer for punitive damages.[3]

The trial court in *Raza I* ruled that *Raza I* and *Raza II* were related and assigned both to itself. On June 20, 2014, plaintiff moved to consolidate *Raza I* and *Raza II*. The trial court denied the motion, stating, "[*Raza I*], filed over a year ago, involves a discrete issue of property damage and has been fully prepared for trial. [*Raza II*] alleges wide ranging claims of bullying by defendants over a lengthy period of time and is at the initial stages of discovery. Consolidating the two cases will not promote judicial economy and would be prejudicial to defendants who oppose the motion."

Plaintiff renewed his motion to consolidate twice following continuances of the trial date in *Raza I*, and the trial court denied those motions as well. Following adverse rulings in *Raza I* on several motions in limine that, among other things, barred plaintiff from introducing his allegations of verbal harassment, plaintiff requested dismissal of *Raza I* with prejudice to facilitate appeal, which the trial court granted.

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[3] Plaintiff filed a first amended complaint in the instant matter on November 4, 2014, adding a cause of action for negligent infliction of emotional distress and making other minor changes. Plaintiff represents that the trial court sustained a demurrer to the cause of action for negligent infliction of emotional distress without leave to amend, although these proceedings are not in the appellate record. This distinction between the original and first amended complaints is not material to this appeal.

C. Defendants' motion in limine no. 7

In advance of trial in *Raza II*, defendants filed motion in limine no. 7 seeking to exclude "any allegations that Defendants[ ] altered the landscaping, grading and irrigation on their property so as to cause underground leakage and intrusion through the walls of Plaintiff's garage and damage to Plaintiff's garage structure. This also includes a request to exclude any evidence relating to the alleged damage and/or cost of repair for the alleged damage to said garage and/or garage structure." Defendants argued that the allegations and evidence they sought to exclude were "the very allegations that form the sole basis for Plaintiff's Complaint in [*Raza I*], which is now currently pending appeal. Thus, evidence of such allegations are not relevant to this action and are unrelated to the facts of the incident or to Plaintiff's injuries and damages alleged herein and should therefore be excluded." Defendants cited Evidence Code sections 350 and 351.

Plaintiff opposed the motion, arguing that although he made no claim for damages to his garage in *Raza II*, the evidence of water intrusion into the garage nonetheless was relevant as "a trespass and a nuisance and part of the so-called 'campaign of terror' to make plaintiff miserable and run plaintiff out of the neighborhood."

The trial court granted the motion in limine, stating to plaintiff's counsel that "there cannot be any mention of the damages to the garage or the wall which were the subject of the case that has been dismissed [*Raza I*], which I understand that you are appealing. So . . . you have an appellate right to appeal your own dismissal, and [if] that somehow gets reinstated, then

you will have a chance to put it on [in] that case. But not in this case."

When plaintiff's counsel asked where the trial court was "drawing the line" as to what evidence it would permit, the trial court stated, "If it was part of the first case, which you dismissed, it's not coming into the second case." The trial court specified that the "factual basis" of *Raza I* was "sprinkling by the defendants and . . . improperly changing the grade of their yard so that the garage and the wall of the plaintiff was damaged. That is not in [*Raza II*]."[4]

D. Trial

The matter proceeded to trial. We limit our summary to the evidence relevant to the issues on appeal.

Plaintiff testified to defendants' purported mistreatment of him, including directing discriminatory insults at him and questioning his entitlement to wear an American military uniform. Plaintiff testified defendants' had sprayed his cars with their sprinklers and allowed vegetation to encroach onto his

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[4] Plaintiff challenges several other evidentiary rulings by the trial court. Although, as discussed *post*, we do not reach those challenges on the merits, we describe the rulings briefly: The trial court granted defendants' motions in limine excluding mention that defendants had insurance or of any subsequent repairs or modifications to defendants' yard. The trial court excluded two of four photographs of plaintiff's dogs. When the defense sought to preclude testimony regarding plaintiff's relationship with the prior owner of his property, the trial court stated that it would allow some testimony on the subject, "but at some point I'm going to sustain an objection on relevance and cumulative grounds."

property, and after plaintiff notified defendants about these issues, defendants failed to address them.

Plaintiff testified that in January 2013, he hired his current counsel who sent a letter to defendants asking them to cut back the foliage and reposition their sprinklers.[5] Shortly thereafter, on January 16, plaintiff discovered his two dogs, one of whom was a puppy, convulsing on the ground and foaming at the mouth. The veterinarian saved the older dog but the puppy died. Plaintiff testified that he believed defendants had poisoned his dogs in reaction to the letter he had sent, and his counsel argued similarly in closing argument.[6]

During cross-examination, defendants' counsel read a section of plaintiff's deposition, taken in 2013 before *Raza II* was filed, in which plaintiff described damage to his " 'periphery wall' " from defendants' "raised grade property." After reading the section, defendants' counsel asked, "You've provided testimony that [defendants] altered the level of the grade [of their property] and caused this water runoff which is massively damaging your periphery wall; isn't that correct?" Plaintiff responded, "That's my best assumption."

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[5] The letter, which defendants' counsel referred to as a "settlement damage letter," also referred to damage to plaintiff's garage, but this was not disclosed to the jury, nor was the letter introduced into evidence.

[6] Defendants denied poisoning plaintiff's dogs, and expert and lay witnesses for both plaintiff and defendants testified at length regarding the issue. Relevant to this appeal is plaintiff's contention, presented to the jury in testimony and argument, that defendants poisoned the dogs in reaction to the letter from plaintiff's attorney. We therefore do not summarize the other evidence pertaining to the alleged poisoning.

Later, defendants called as an expert John Vincent Doyle, a consulting civil engineer. Defendants' counsel asked Doyle whether he made a determination as to whether defendants had elevated the grade of their property. Plaintiff's counsel objected on the basis of foundation and stated, "That claim is not made in this case." The trial court overruled the objection. Doyle then testified that he had examined the plat map, and could determine from that document that the grade of the property had not changed since defendants had purchased the property.

During closing arguments, defendants' counsel said, "[Plaintiff] claimed in his testimony, you heard him, that [defendants] elevated the grade of the yard after they moved in." Defendants' counsel then referred to Doyle's testimony that the grade of the property had not changed since defendants moved in. Defendants' counsel argued, "[Plaintiff] told you that [defendants] did it, but he didn't present any evidence on the subject. He didn't present any photos that would show it. He presented no evidence, he just said it was true. We proved that it was not true."

E. Verdict and appeal

The jury returned a verdict in favor of defendants on all causes of action. Plaintiff timely appealed.

DISCUSSION

I. The Trial Court Abused Its Discretion In Excluding Evidence Relating To Water Intrusion And Damage To Plaintiff's Garage

Plaintiff challenges the trial court's grant of defendants' motion in limine no. 7, arguing that evidence that defendants

caused water to flow into his yard and damage his garage was relevant to "tell[ing] a coherent story" of defendants' purported pattern of harassing and threatening conduct towards him. We agree.

A. Applicable law and standard of review

Defendants' motion in limine was based on Evidence Code[7] section 350, which provides that "[n]o evidence is admissible except relevant evidence," and section 351, providing that "[e]xcept as otherwise provided by statute, all relevant evidence is admissible." " 'Relevant' evidence is evidence 'having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.' " (*D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 229, quoting § 210.) Although the trial court did not cite a particular statutory provision in granting the motion, we presume the trial court found the garage evidence irrelevant to the issues in *Raza II* because plaintiff's claims regarding the garage were the subject of *Raza I*, which plaintiff had dismissed.

We review the trial court's evidentiary rulings for abuse of discretion. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 584.)[8] To the extent the trial court erred, we may reverse only if the error is prejudicial such that " 'it is

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[7] Further unspecified statutory citations are to the Evidence Code.

[8] Plaintiff argues the trial court's ruling on motion in limine no. 7 constituted a "complete ban on an issue that was part of the story [plaintiff] attempted to tell to the jury," and that our review should be de novo. Plaintiff cites no authority in support of this proposition, and we reject it.

reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' " (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800 (*Cassim*).) " '[A] "probability" in this context does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*.' " (*Ibid.*)

B. Analysis

We conclude the trial court abused its discretion in excluding evidence of the water intrusion and damage to plaintiff's garage as irrelevant. It is true the excluded evidence was the focus of *Raza I*, but that did not make it irrelevant to *Raza II*.

In *Raza II*, plaintiff sought to prove that defendants had engaged in a continuing course of threatening and harassing conduct intended to drive him from his property, resulting in his selling his property at a steep discount. Defendants' alleged conduct included not only verbal harassment, but also physical encroachment on his property allegedly causing damage and emotional distress. The purported water intrusion and damage to the garage was the strongest evidence of that physical encroachment. Without that evidence, plaintiff could present to the jury only the encroachment of defendants' sprinklers hitting his cars and their foliage growing over the property line. Arguably, the jury could have reasonably found that this limited evidence described a mere annoyance and could not have been conduct causing someone to move and sell property at a below market price.

Evidence of the garage damage also was crucial to illustrating the scope of the ongoing dispute between plaintiff and defendants, a dispute that plaintiff claimed ultimately led to

defendants' poisoning his dogs. A jury may not have believed that a letter asking defendants to reposition their sprinklers and cut back their foliage would trigger such an extreme reaction. We cannot say the jury would not have found plaintiff's theory more credible had the jury known that plaintiff's attorney's letter also claimed significant (and presumably costly) water damage to his garage.

Plaintiff suffered additional prejudice when defendants themselves raised an issue from *Raza I* in order to attack his credibility. When plaintiff's counsel asked what issues the trial court was excluding by granting motion in limine no. 7, the trial court specified that the "factual basis" of *Raza I* was "improperly changing the grade of their yard so that the garage and the wall of the plaintiff was damaged," and expressly stated that issue "is not in [*Raza II*]." Plaintiff's testimony on direct examination complied with the limitation and plaintiff did not discuss the purported change of grade.

On cross-examination, however, defendants' counsel raised the issue of the grade change by quoting plaintiff's deposition testimony from *Raza I*. Then, over plaintiff's counsel's objection that the issue was outside the scope of the case, the defense elicited testimony from their expert, Doyle, that defendants had not in fact altered the grade of their property. In closing, defendants' counsel argued, "[Plaintiff] told you that [defendants] [altered the grade], but he didn't present any evidence on the subject. He didn't present any photos that would show it. He presented no evidence, he just said it was true. We proved that it was not true."

Having granted the motion in limine to exclude evidence of the alleged grade change and resulting garage damage, the

trial court should have sustained the objection to Doyle's testimony. The prejudice from this error was clear when defendants' counsel accused plaintiff of failing to prove the grade had been changed, thus undercutting his credibility, when in fact the grade change was not at issue and the trial court had prohibited plaintiff from mentioning it in the first place.

Again, to find prejudicial error we need not determine that plaintiff more likely than not would have prevailed absent the error—it is enough that there is a " '*reasonable chance*' " of a different outcome. (*Cassim*, *supra*, 33 Cal.4th at p. 800.) The trial court's errors here meet that standard, and reversal is appropriate.

Defendants argue plaintiff through this appeal improperly "seeks to revive the issues he dismissed with [*Raza I*]." As we explain in our separate *Raza I* opinion, plaintiff's dismissal of that case with prejudice was not truly voluntary, but a dismissal to facilitate appeal following adverse rulings by the trial court. (*Raza v. Spain*, *supra*, B278096).) Specifically, plaintiff dismissed that case after the trial court erroneously denied his leave to amend the complaint to add the allegations he later asserted in *Raza II*, then denied plaintiff's efforts to consolidate the cases or introduce evidence in *Raza I* pertaining to the discrimination and harassment alleged in *Raza II*. (*Ibid*.) Thus, plaintiff's dismissal of *Raza I* cannot be construed as an abandonment of the claims raised in that case, and does not justify restricting his ability to assert those allegations in support of the *Raza II* claims.

II. We Do Not Reach Plaintiff's Other Claims Of Error

Plaintiff claims the trial court erred by granting motions in limine precluding mention of defendants' insurance coverage and

defendants' purported alteration of their landscaping after plaintiff filed *Raza I*. Plaintiff also challenges the trial court's rulings excluding photographs of plaintiff's dogs and limiting testimony regarding plaintiff's relationship with his property's prior owner. Because the trial court's error in granting motion in limine no. 7 justifies reversal, we decline to address those other challenges.

DISPOSITION

The judgment is reversed.[9] Plaintiff is awarded his costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

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[9] We express no opinion as to the effect of any subsequent events, including plaintiff's death, on the allegations or causes of action in plaintiff's complaint.