Filed 5/30/17 County of Los Angeles v. Los Angeles County Civil Service Com. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF LOS ANGELES, Petitioner and Appellant, v. LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, Respondent, DANIEL GENAO, Real Party in Interest and Respondent.	B276893 (Los Angeles County Super. Ct. No. BS156215)

APPEAL from an order of the Superior Court of Los Angeles County, Robert H. O'Brien and Amy D. Hogue, Judges. Affirmed.

Guitierrez, Preciado & House, Calvin House, Clifton A. Baker, for Petitioner and Appellant.

Green & Shinee, Richard A. Shinee, Gidian R. Mellk, for Real Party in Interest and Respondent.

INTRODUCTION

Petitioner and appellant County of Los Angeles (County) petitioned for writ of administrative mandamus to overturn a decision by the Los Angeles County Civil Service Commission (the Commission). Real party in interest Daniel Genao (Genao) filed a demurrer, contending the petition was untimely. After granting County leave to amend once, the trial court sustained Genao's demurrer to the first amended petition without leave to amend. We affirm.

FACTS AND PROCEDURAL BACKGROUND

County discharged Genao from his employment as a Los Angeles County Sheriff's Department deputy for writing a false arrest report and probable cause declaration. Genao appealed the discharge to the Commission.

The appeals process lasted several years. The hearing officer recommended Genao's full reinstatement, and the Commission initially announced a proposed decision to adopt her recommendations. County timely filed objections to this proposed order.

The Commission reconsidered the recommendation and voted on March 11, 2015 to sustain in part County's objections. On March 17, 2015, the Commission sent the parties a "NOTICE OF NEW PROPOSED DECISION." The notice confirmed in writing what the commissioners announced orally at their March 11, 2015 meeting: County's objections were sustained in part. Genao would not be discharged, but he would be suspended for 30

days. The notice included a complete copy of Civil Service Rule 4.13 (Rule 4.13) and further advised the parties had 15 days to file objections with the Commission and serve other parties: "Objections in this matter are due by 5:00 p.m., April 6, 2015**.** If objections are not received by this deadline, the decision shall be final and conclusive at 5:01 p.m." The notice concluded: "In the event no objections are filed, anyone desiring to seek review of this decision by the Superior Court must do so under Section 1085 or Section 1094.6[1] of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision."

No party objected; no party asked for findings of fact or conclusions of law. No order was generated on April 6, 2015, at 5:01 p.m.

Instead, on April 21, 2015, the Commission issued a "FINAL DECISION." The document confirmed no objections were filed and advised, "Therefore, the following is the Commission's final decision in the matter." The document then recited verbatim the language in the previously mailed new proposed decision and again advised a petition for writ relief in the Superior Court "can only be commenced within 90 days of the decision."

The 90th day after April 6, 2015, fell on a Sunday; the next court day was July 6, 2015. County filed its petition July 8, 2015. The body of the petition made no mention of the April 6, 2015 proposed new decision, but exhibit 1 to the pleading was the April 21, 2015 notice.

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1 All statutory references are to the Code of Civil Procedure.

Genao filed a demurrer, arguing County was required to file the petition within 90 days of April 6, 2015, the date the Commission's decision became final, not 90 days from the April 21, 2015 document. He requested judicial notice of the March 17, 2015 communication and Civil Service rules 4.13 and 4.14. County did not oppose the request, and judicial notice was granted. The trial court sustained the demurrer with leave to amend. The judge noted in her ruling (Hon. Joanne B. O'Donnell ruled on the initial demurrer) that "[w]hile Petitioner's error appears to be irremediable in nature, the Court grants 15 days' leave to amend . . . to give Petitioner the opportunity to allege any factual circumstances that might equitably toll the running of the limitation period or to contend that another statutory limitation period is applicable."

County filed a first amended petition. Specifically addressing equitable estoppel, it alleged the "Commission knowingly, or with gross negligence, misled Petitioner into believing that [the April 21, 2015 notice] was the final decision and that the statute of limitations accrued on [that date]. The Final Decision document was misleading because it was entitled 'Final Decision' and announced the final decision and the accrual of the statute of Limitations." County added the April 21, 2015 document "was misleading, knowingly or with gross negligence, for the additional reason that it required Petitioner to make the unreasonable assumption that the Commission engaged in an idle act when it provided the final Decision, and that Petitioner was required to ignore and disregard an official legal document from the Commission."

Alternatively, County alleged the April 21, 2015[2] document was the final decision and the 90-day statute of limitations should be calculated from that date. Or, the 90-day statute had not even begun to run because the April 21, 2015 document did not include a proof of service, so it was not yet effective.

Genao filed another demurrer on the same grounds. The trial court (this time, Hon. Robert H. O'Brien) sustained his demurrer without leave to amend. The County appeals.

DISCUSSION

The law in this area is clear. The question is whether the April 21, 2015 document somehow compels a different result.

"On appeal from a judgment after an order sustaining a demurrer, our standard of review is de novo. We exercise our independent judgment about whether, as a matter of law, the complaint states facts sufficient to state a cause of action. [Citations.] We view a demurrer as admitting all material facts properly pleaded but not contentions, deductions, or conclusions of fact or law. [Citation.]" (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700-701.)

A petition for writ of administrative mandamus "shall be filed not later than the 90th day following the date on which the decision becomes final." (§ 1094.6, subd. (b).) If the applicable rules (in this case, Civil Service Rules) do not provide for reconsideration, "the decision is final on the date it is announced." (*Ibid.*) If the applicable rules provide "for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage

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2 The first amended petition contains several typographical errors and lists the operative dates as 2016 instead of 2015.

prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. . . ." (*Ibid.*)

The County argues Rule 4.13 contains a provision for a written decision and thus the limitations period in section 1094.6 did not begin to run until the Commission mailed the "Final Decision" on April 21, 2015. Rule 4.13 does contain such a provision, but it applies only if a party requests findings of fact and conclusions of law. Neither Genao nor County made the request. According to the rule, County is "deemed to have waived the right to findings of fact and conclusions of law." (Rule 4.13(B).)

Once the Commission's decision in a matter becomes final, the Commission "may not in any event reconsider or reopen a decision." (*Gutierrez v. Board of Retirement* (1998) 62 Cal.App.4th 745, 749, fn. 3.) On March 17, 2015, all parties were notified the Commission's decision would become final on April 6, 2015, unless one or both parties took affirmative action. And in that same document, the parties were advised any Superior Court challenge must be made no later than the 90th day after the decision became final. No party acted; so the decision became final by its own terms. The Commission essentially lost jurisdiction on April 6, 2015.

But does the April 21, 2015 letter mean Genao and the Commission should be equitably estopped from asserting April 6, 2015 as the finality date? The answer is no.

"'Four elements must ordinarily be proved to establish an equitable estoppel: (1) The party to be estopped must know the facts; (2) [It] must intend that [its] conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the

estoppel must be ignorant of the true state of facts; and, (4) [it] must rely upon the conduct to his injury.' [Citation.]" (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59.) It is not necessary to analyze each element, as County's argument founders on number three.

The County was aware of "the true state of facts." It pleaded them in the original and the first amended petition. No one has suggested what the Commission intended to accomplish by sending the April 21, 2015 document. With hindsight, it may be viewed as ill-advised. But it was not inaccurate. Nor may it reasonably be viewed as an attempt to alter the date of the final decision.[3] The document recites no objections were filed by the April 6, 2015 deadline, so "[t]herefore" the previously announced proposed decision became final. The Commission made no representation in the April 21, 2015 document that the document would be the new trigger for the 90-day statute of limitations.

There is no basis for the application of equitable estoppel. County's petition for writ relief was untimely.

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3 The April 21, 2015 document does contain a typographical error. It advised the Commission's proposed new decision was "sent out for objections" on March 11, 2015. The letter was sent March 17, 2015. The error is of no moment, as the document correctly notes objections were to be filed no later than April 6, 2015.

DISPOSITION

The judgment is affirmed. Genao is awarded his costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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