Filed 7/22/15 Noble v. County of L.A. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JAMES JOHN NOBLE et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B256648 (Los Angeles County Super. Ct. No. BC489117)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

James John Noble, in pro. per., for Plaintiffs and Appellants.

Peterson Bradford Burkwitz, Avi Burkwitz and Sherry M. Gregorio for Defendant and Respondent.

Appellant James John Noble, acting in propria persona on behalf of himself and his children, appellants Madalyn Lorraine and James Anthony Noble, brought suit against respondent, the County Los Angeles, and "employees of the Los Angeles County Department of Child Support Services/Palmdale Division [LA DCSS]."[1] The operative second amended complaint (SAC) contained a single cause of action for violation of civil rights under 42 U.S.C. section 1983 (section 1983). In essence, it alleged that respondent collected child support from Noble based on a void judgment, and without regard to the fact that Noble had sole custody of the children during the entire time respondent pursued the collections. The trial court sustained a demurrer to the SAC without leave to amend, finding appellants had failed to state a claim under section 1983. The court further found that Madalyn and James lacked standing to pursue the claim, and struck as improperly pled the DOE allegations under which appellants sought to add LA DCSS employees. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background Facts*[2]

In the late 1990's, Noble became disabled after sustaining a back injury at work and a botched surgery intended to correct the injury. In June 2000, he moved to New Jersey. He continued to pay the mortgage on the Palmdale home where his

---

1 Because they share their father's surname, Madalyn and James will be referred to by their first names.

2 The facts stated are set forth in the operative SAC, which for purposes of resolving a demurrer are deemed true. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

former wife, Cyndi Lane, and their children, Madalyn and James, lived.[3] He also gave Lane money for child support. In July 2001, Noble learned that the children had been detained from Lane by the Department of Children and Family Services (DCFS). He advised the agency of his address in New Jersey and of his intent to seek custody.

At approximately the same time as the dependency petition was filed, LA DCSS filed a complaint in California seeking child support.[4] The summons and complaint were served at Noble's former California address.[5] Noble was unaware the complaint had been filed and purportedly served. On August 31, 2001, LA DCSS obtained a default judgment against Noble.

In December 2001, the juvenile court in the dependency proceeding transferred custody of the children to Noble, who had used the proceeds of his medical malpractice lawsuit to buy a condominium in Virginia. In June 2002, DCFS transported the children to Noble in Virginia.

In 2003, Noble learned of the default judgment in the amount of $27,000 when attempting to renew his driver's license. He contacted LA DCSS and was

---

[3] In their brief, appellants state that Noble took the children with him when he went to New Jersey to get them away from Lane, a drug abuser, but returned them when he was threatened with kidnapping charges.

[4] Counties are empowered by the Family Code to pursue and enforce child support orders on behalf of children receiving public assistance and, if requested, on behalf of children not receiving public assistance (Fam. Code, § 17400, subd. (a)); *Plumas County Dept. of Child Support Services v. Rodriquez* (2008) 161 Cal.App.4th 1021, 1027.) The SAC does not state whether the LA DCSS complaint sought arrearages or ongoing support. With regard to recoupment of arrearages, it is immaterial that the former noncustodial parent has custody at the time of the county's recoupment action. (Hogoboom et al., Cal. Practice Guide: Family Law (The Rutter Group, 2015) ¶ 6:78.1, p. 6-60; *County of Orange v. Carl D*. (1999) 76 Cal.App.4th 429, 435-436.)

[5] Appellants alleged that Lane fraudulently gave her own address to LA DCSS as Noble's.

informed that he had no recourse but to pay the money and that nothing could be done about the default. Noble eventually retained an attorney, Nancy Kelso, who filed the appropriate papers to have the default judgment set aside, but did not appear on the date of the hearing, December 8, 2003.[6] In the meantime, LA DCSS attached Noble's bank accounts and, having no money to pay association fees, Noble lost his condominium. In the years that followed, Noble and his children lived in a series of motels and apartments. Noble could not drive due to the loss of his driver's license. In 2009, Noble lost the bulk of his possessions when he was unable to pay the storage fees. Beginning in 2010, money was withheld from Noble's Social Security payment.

In 2012, the court issued an order dismissing the default.

2. *Demurrer*

Appellants' original complaint was filed July 27, 2012, naming respondent County of Los Angeles as defendant. A demurrer was sustained, and appellants filed a first amended complaint (FAC) which included a claim under section 1983. A demurrer to the FAC was sustained without leave to amend any of the claims, except the section 1983 claim.

Appellants filed the SAC, purporting to add as DOE defendants unnamed "employees of [LA DCSS]." The SAC contained a single cause of action for violation of section 1983. It alleged that defendants violated Noble's Fourteenth Amendment right to due process by failing to serve him with notice or inform him of the default judgment in a timely fashion, and "weakened [appellants'] pursuit of

---

[6] Noble was unable to contact Kelso until 2010. When confronted, she admitted she arrived at the hearing late, but did not explain why she did not seek to have the matter rescheduled.

life, liberty, and property" by deducting funds from his bank accounts. Appellants contended the statute of limitations accrued on January 20, 2012, when the default judgment was dismissed.[7]

Respondent demurred to the SAC contending: (1) the section 1983 claim was barred by the statute of limitations; (2) the section 1983 claim failed to state facts sufficient to constitute a cause of action; (3) the SAC was uncertain, ambiguous and unintelligible; and (4) Madalyn and James lacked standing to bring the complaint.[8]

The trial court sustained the demurrer without leave to amend. In its order, the court explained: "To allege a Section 1983 cause of action a complaint must demonstrate (1) conduct committed by a person acting under color of state law that (2) deprives a person of rights, privileges or immunities secured by the Constitution or other law of the United States. [Citation.] A local government may be sued under a Section 1983 theory where plaintiff alleges the municipality acted deliberately and was the moving force behind the action taken, and where the allegedly unconstitutional action 'implements or executes a policy statement, ordinance, regulation, or decision officially adopted,' and for constitutional violations that occur 'pursuant to custom.' [Citation.] [¶] Plaintiffs' § 1983 cause of action is based on the allegation that Noble was not provided with notice of the child support proceeding against him. Assuming for the sake of argument that Plaintiff Noble was not provided with notice of the DCSS action against him, there

---

[7] The SAC also alleged that "Noble did not comprehend the destructiveness of the August 31, 2001 Default Judgment until March 2010, when he finally confronted Kelso and asked her why she failed to appear in Court on December 8, 2003" and that "being disabled, denied a driver's license, and obliged to raise two minor child[ren] after [respondent] pushed him into poverty, Noble was in no position to fight."

[8] Respondent also moved to strike, contending appellants had not complied with proper procedures in seeking to add the employees of LA DCSS as DOE defendants.

are insufficient allegations of wrongdoing against Defendant County of Los Angeles to constitute a cause of action. Plaintiffs have not alleged that Defendant . . . acted deliberately or was the driving force behind Noble's lack of notice . . . . The only facts alleged in this regard are that Plaintiff's ex-wife is believed to have fraudulently supplied her own address rather than Plaintiff's address [Citation.] Moreover, while Plaintiff Noble alleges that he informed Defendant of its 'mistake' in service of process, he admits that he was given a hearing date in December 2003 to address this issue and that he failed to appear. [Citation.] Thus, Plaintiffs have not alleged sufficient factual allegations to state a cause of action for [v]iolation of 42 U.S.C. [§ 1983]."

The court further found that Madalyn and James lacked standing to sue "because they have not alleged that they, as opposed to their father, were deprived of notice of child support proceedings," and "the child support proceedings were directed at Plaintiff Noble."[9] Judgment was entered in favor of respondent. This appeal followed.

DISCUSSION

A. *Standard of Review*

"On appeal from a judgment of dismissal entered after a general demurrer is sustained, our review is de novo. [Citation.] We examine the allegations of the complaint to determine whether it states a cause of action, and if not, we determine whether there is a reasonable possibility that it could be amended to do so. [Citation.] . . . ." """We treat the demurrer as admitting all material facts properly

---

[9] Additionally, the court granted the motion to strike the language adding "[e]mployees of the [LA DCSS]," finding such allegation improper because "Plaintiffs do not allege that they are ignorant of the Doe Defendants' true names." The court did not reach the statute of limitations issue.

pleaded, but not contentions, deductions or conclusions of fact or law. . . ." . . . [W]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]'" (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525, quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

"'If substantial facts which constitute a cause of action are averred in the complaint or can be inferred by reasonable intendment from the matters which are pleaded, although the allegations of these facts are intermingled with conclusions of law, the complaint is not subject to demurrer for insufficiency.'" (*Berkley v. Dowds*, *supra*, 152 Cal.App.4th at p. 525, quoting *Krug v. Meeham* (1952) 109 Cal.App.2d 274, 277.) If the plaintiff contends on appeal that there is a reasonable possibility the defect in the pleading can be cured by amendment, he or she "'"must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading . . . ." [Citation.]' [Citation.]" (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 8.)

With these standards in mind, we review the allegations of the SAC to determine whether respondent's demurrer was properly sustained without leave to amend.

B. *Adequacy of Plaintiff's Section 1983 Claim*

"Section 1983 imposes civil liability on a person acting under color of state law who deprives a person of a federal constitutional or statutory right."[10] (*Perry v. County of Fresno* (2013) 215 Cal.App.4th 94, 105.) Local governments can be

[10] Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

sued under section 1983 for monetary, declaratory, or injunctive relief where the unconstitutional actions of its employees "'implement[] or execute[] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officer'" or where the constitutional deprivation was "'visited pursuant to governmental "custom" even though such a custom had not received formal approval through the body's official decisionmaking channels.'" (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 348-349, quoting *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658, 663, 690-691 (*Monell*); accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1147.) In other words, "'a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.'" (*Pitts v. County of Kern, supra*, at p. 349, quoting *Monell, supra*, at p. 694.) The plaintiff must demonstrate that "'through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged'" and the existence of "'a direct causal link between the municipal action and the deprivation of federal rights.'" (*Pitts v. County of Kern, supra*, at p. 349, quoting *Bd. of County Com'rs of Bryan County, Okl. v. Brown* (1997) 520 U.S. 397, 404; accord, *Zelig v. County of Los Angeles*, *supra*, at p. 1147.)

Here, appellants contended that unidentified employees of LA DCSS failed to ensure that the complaint seeking payment of child support was properly served on Noble prior to obtaining the default judgment, allegedly violating his due process rights.[11] However, to state a section 1983 claim, "[i]t is not sufficient that

---

[11] As the trial court ruled, because the due process rights at issue were Noble's alone, Madalyn and James lacked standing to pursue the section 1983 claim. (See *Powers v.*

(Fn. continued on next page.)

plaintiff demonstrate a single unlawful act by a non-policymaking employee." (*Stewart v. Block* (C.D. Cal. 1996) 938 F.Supp. 582, 587.) "Local governments have no liability under . . . section 1983 simply because their employees may have violated a plaintiff's constitutional rights; . . ." (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 328.) Appellants did not allege or seek to allege that it was the official policy or regular custom and practice of respondent to obtain default judgments by failing to properly serve complaints on parents who owed child support, or even that in this instance, the defective service was the result of deliberate conduct on the part of respondent. To the contrary, the SAC alleged that the agency had been misled by Noble's ex-wife, who provided a false address for him. "'[T]he touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution[.]'" (*Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1564, quoting *Monell*, *supra*, 436 U.S. at p. 690.) Appellants failed to assert such allegation and accordingly, failed to state a claim under section 1983. (See *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1259-1260 [section 1983 claim failed where plaintiffs could not show that city had "an official policy that deprived homeowners of due process notice"]; *Davis v. City of Ellensburg* (9th Cir. 1989) 869 F.2d 1230, 1233-1234 [plaintiffs failed to establish injury to decedent was caused by existence of policy of inadequate training, inadequate medical treatment of prisoners, or deliberate indifference to use of excessive force as opposed to "single incident of unconstitutional action by a non-policymaking [officer]"]; *Hissom v. New York City Dept. of Housing Preservation and*

Ashton (1975) 45 Cal.App.3d 783, 787 [person possessing the right sued upon by reason of substantive law is the real party in interest; all others lack standing].) Lack of standing may be raised on demurrer. (*Ibid*.; *Redevelopment Agency of San Diego v. San Diego Gas & Electric Co*. (2003) 111 Cal.App.4th 912, 920.)

Development of City of New York (S.D.N.Y., Dec. 22, 1987, No. 86 CIV. 2340) 1987 U.S. Dist. LEXIS 13372, at *8, *15 [“frivolous” to suggest that agency had policy or practice of inadequate service of process based on service of three complaints on person who shared offices with plaintiff].)

Having concluded that the SAC failed to assert a cognizable claim, we must determine whether the trial court abused its discretion in sustaining the demurrer without leave to amend. (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081; *Barroso v. Owen Loan Servicing, LLC* (2012) 208 Cal.App.4th 1001, 1008.) Leave to amend is properly denied “‘where it is probable from the nature of the defects and previous unsuccessful attempts to plead that the plaintiffs cannot state a cause of action [citation.’” (*Titus v. Canyon Lake Property Owners Assn*. (2004) 118 Cal.App.4th 906, 917, quoting *Haskins v. San Diego County Dept. of Public Welfare* (1980) 100 Cal.App.3d 961, 965.) As discussed, appellants had three attempts to state a cognizable claim and failed to do so. Appellants do not describe any new or different facts that could be pled to correct the defects in the SAC. Accordingly, we conclude the trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.