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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

VINCENT A. CALLENDER,

Plaintiff and Appellant,

v.

LOS ANGELES DEPENDENCY  
LAWYERS,

Defendant and Respondent.

B281638

(Los Angeles County  
Super. Ct. No. BC612208)

APPEAL from a judgment of the Superior Court of Los Angeles County, John P. Doyle, Judge. Affirmed.

Vincent A. Callender, in pro. per., for Plaintiff and Appellant.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer and David B. Owen for Defendant and Respondent.

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Plaintiff Vincent A. Callender appeals from a judgment of dismissal entered after the trial court sustained defendant Los Angeles Dependency Lawyers' demurrer to Callender's second amended complaint without leave to amend. We affirm.

## **BACKGROUND**

Callender filed this action against the Los Angeles County Department of Children and Family Services (DCFS) and Los Angeles Dependency Lawyers (LADL) on March 1, 2016. His form complaint stated that he was alleging causes of action for negligent infliction of emotional distress, civil rights violations, fraud, professional negligence, breach of contract, and RICO violations. He alleged damages occurring from 2007 to 2016. He sought exemplary damages based on a conspiracy to defraud him of his parental rights. The complaint contained no factual allegations.

LADL filed a demurrer to the complaint based on the lack of any factual allegations. The trial court sustained the demurrer on this basis. Although Callender failed to file opposition, the trial court nonetheless granted him leave to amend.

Callender then filed a 50-page handwritten amended complaint. He added 15 new defendants, including his wife and various social workers and attorneys. The amended complaint contained a rambling and confusing collection of facts and discussion of law. It appeared, however, that Callender's causes of action arose from the termination of his parental rights in 2012.

LADL again demurred, and the trial court sustained its demurrer. The court explained: "LADL correctly notes that

[Callender's] action, filed on 3/1/16, is outside the one[-]year statute of limitations provided in [Code of Civil Procedure section] 340.6 for actions against attorneys arising out of the performance of professional services . . . ." Callender alleged "he was aware of the misconduct on 8/10/11 and his lost parental rights on 8/3/12." Therefore, his action fell outside the one-year limitations period, and Callender had "fail[ed] to allege any facts to support the fraud exception [to the one-year period] as to LADL. [¶] Additionally, no facts are alleged to apprise LADL of the nature, source, and extent of [Callender's] claims against it or to distinguish it from other named defendants." The court added that "[a]lthough [Callender] failed to file an opposition, the [c]ourt will grant [Callender] one last opportunity to amend as the [amended complaint] is an improvement as to the factual allegations compared to the original form complaint."

Callender then filed the operative 60-page handwritten second amended complaint. In the introduction, he noted that none of the defendants other than LADL had responded in any way to his complaint. He stated that if the court dismissed the action as to LADL, he "request[ed] that this court enter default upon the remaining defendants who failed to respond or appear in this matter." He argued in the complaint that the limitations period for a legal malpractice action was four years under Code of Civil Procedure section 340.6, subdivision (a), and he "sustained damages on August 3, 2012 when the court terminated reunification services [which] is within the statute of limitations . . . ."

LADL again demurred on the grounds the second amended complaint was "still so hopelessly vague, ambiguous and uncertain that it fails to state any valid cause of action against

LADL,” and any cause of action was barred by the statute of limitations. This time the trial court sustained the demurrer without leave to amend.

The trial court noted that the second amended complaint was “more rambling and difficult to discern than the [first amended complaint] but continues to arise out of his loss of parental rights,” and specifically the termination of reunification services on August 3, 2012. Additionally, Callender alleged no facts which would support the fraud exception to the one-year statute of limitations, and the allegations were unclear as to the nature, source, and extent of his claims against LADL, as opposed to the other defendants. Callender failed to file opposition to the demurrer, and he failed to address the bases on which LADL’s demurrer to the first amended complaint was sustained. For that reason, the court declined to grant Callender another opportunity to amend.

On January 5, 2017, the trial court entered a judgment of dismissal as to LADL. The clerk’s transcript contains a copy of a notice of entry of judgment that was mailed to the parties on January 6, 2017. The notice does not indicate who prepared it or was responsible for mailing it. Callender filed his notice of appeal on March 14, 2017.

## **DISCUSSION**

California Rules of Court, rule 8.104(a)(1), provides that a notice of appeal must be filed within 60 days of service of the notice of entry of judgment. This time limit is mandatory and jurisdictional. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842.) “If

a notice of appeal is filed late, the reviewing court must dismiss the appeal.” (Cal. Rules of Court, rule 8.104(b).)

Callender filed his notice of appeal 67 days after service of the notice of entry of judgment contained in the clerk’s transcript. On September 21, 2018, we sent a letter to the parties pursuant to Government Code section 68081 requesting additional briefing addressing whether Callender’s notice of appeal was timely filed.

Callender responded on October 9, 2018. In his declaration, he stated that LADL mailed him a notice of entry of judgment on January 24, 2017. He attached a copy of that notice. Based on this notice of entry of judgment, Callender’s notice of appeal was timely, and we have jurisdiction to consider this appeal.

Code of Civil Procedure section 340.6, subdivision (a), provides “[a]n action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.” The section “states ‘two distinct and alternative limitation periods: *one* year after actual or constructive *discovery*, or *four* years after *occurrence* (the date of the wrongful act or omission), whichever occurs first.’ [Citations.]” (*Samuels v. Mix* (1999) 22 Cal.4th 1, 7.)

As the trial court noted, Callender alleged injury occurring on August 3, 2012, the date his reunification services and/or parental rights were terminated. He points to no allegations in his complaint supporting a finding that he did not actually or constructively discover the facts constituting the wrongful act or

omission at that time. Consequently, the one-year statute of limitations applied, because it was the one which “occur[red] first.” (Code Civ. Proc., § 340.6, subd. (a).) His lawsuit was therefore untimely. (*Samuels v. Mix, supra*, 22 Cal.4th at p. 7.)

“ ‘ “The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.” [Citations.]’ [Citations.] ‘ “The ultimate question for review is whether the complaint showed *on its face* that the action was barred by a statute of limitations, for only then may a general demurrer be sustained and a judgment of dismissal be entered thereon.” [Citation.]’ [Citation.]” (*Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.* (2012) 206 Cal.App.4th 1036, 1044.) Callender’s complaint disclosed on its face that his claims against LADL were barred by the statute of limitations. Therefore, the trial court properly sustained LADL’s demurrer and dismissed the action as to LADL on that basis.

Callender also raises a claim of error regarding the failure to enter default judgments as to defendants who did not file answers to his complaint. This claim is not properly before us on this appeal. The judgment from which Callender appealed applied to LADL only. We consider only the claims raised as to LADL. (See *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 437.)

## DISPOSITION

The judgment is affirmed. LADL is to recover its costs on appeal.

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JOHNSON, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.\*

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