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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

KIMBERLY KOERBER,

Plaintiff and Appellant,

v.

PROJECT VERITAS et al.,

Defendants and Respondents.

B285592

Los Angeles County
Super. Ct. No. BC649878

APPEAL from orders of the Superior Court of Los Angeles County, Elizabeth R. Feffer, Judge. Appeal dismissed.

Gary Rand & Suzanne E. Rand-Lewis and Suzanne E. Rand-Lewis for Plaintiff and Appellant.

Litchfield Cavo, G. David Rubin and Elizabeth M. Sanguinetti for Defendants and Respondents.

INTRODUCTION

This is plaintiff Kimberly Koerber’s second appeal in a lawsuit Koerber filed after Project Veritas edited and published a surreptitiously recorded interview of her. (See *Koerber v. Project Veritas* (Sept. 26, 2019, B287742) [nonpub. opn.]) (*Koerber I*.) In Koerber’s first appeal, we affirmed the trial court’s order granting Project Veritas’s special motion to strike all causes of action against it in the operative first amended complaint under Code of Civil Procedure¹ section 425.16.

In this appeal, Koerber challenges the trial court’s orders granting motions to quash service of summons and the original complaint, which were filed by Project Veritas, Project Veritas Action Fund (Action Fund), Allison Maass, James O’Keefe III, and Christian Hartsock (collectively, the Project Veritas Parties). Because Koerber filed an amended complaint before the court entered its orders granting the motions to quash, we conclude the motions were rendered moot and the orders purporting to grant those motions lack legal effect. Accordingly, we dismiss Koerber’s appeal as moot.

BACKGROUND

Koerber used to work for Cengage Learning, Inc. and Cengage Learning Holdings II, Inc. (collectively, Cengage), companies that specialize in “educational content, technology, and services.” Koerber was a sales consultant who sold “National Geographic materials.” Cengage fired Koerber in January 2016

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

after Project Veritas published footage of a surreptitiously recorded interview in which Koerber made numerous disparaging remarks about, among other things, people who oppose the Common Core curriculum, Republicans, school administrators in Texas, and the Second Amendment.

In February 2017, Koerber sued Project Veritas, Project Veritas LLC, Project Veritas Action Fund, Breakthrough Dev Group, O’Keefe, Maass, Hartsock, “Doe 1 Female Using the Pseudonym ‘Alyssa Harris,’ ” “Doe 3 Male Using the Pseudonym ‘Steve Packard,’ ” Cengage, and three of Koerber’s former supervisors² for numerous claims arising out of Project Veritas’s surreptitious recording, editing, and publishing of Koerber’s interview and Koerber’s subsequent termination from her job. The complaint asserted 23 claims, including 11 causes of action against the Project Veritas Parties for, among other things, invasion of Koerber’s privacy.

In March 2017, Project Veritas, Action Fund, O’Keefe, Maass, and Hartsock filed motions to quash service of the summons and complaint under section 418.10.³ The Project Veritas Parties argued Koerber failed to properly serve them

² Cengage and Koerber’s former supervisors are not parties to this appeal.

³ Project Veritas, Action Fund, and O’Keefe filed their motions on behalf of themselves as well as on behalf of Project Veritas LLC and Breakthrough Dev Group. Project Veritas, Action Fund, and O’Keefe asserted Project Veritas LLC and Breakthrough Dev Group do not exist.

Maass filed her motion on behalf of herself and “Doe 1 Female Using the Pseudonym ‘Alyssa Harris,’ ” and Hartsock filed his motion on behalf of himself and “Doe 3 Male Using the Pseudonym ‘Steve Packard.’ ”

with the summons and complaint, and Action Fund, O’Keefe, and Maass separately argued the court lacked general and specific jurisdiction over them because they did not have sufficient minimum contacts with California. Koerber filed a single opposition to the Project Veritas Parties’ motions to quash.

On June 16, 2017, the court heard argument on the motions. That same day, the court issued a minute order finding Koerber failed to properly serve any of the Project Veritas Parties and that the court lacked personal jurisdiction over Maass and Action Fund because they did not have sufficient contacts with California. The court directed the Project Veritas Parties to provide notice of the court’s rulings and to file proposed orders for the court to sign.

On June 23, 2017, Koerber filed a first amended complaint. The amended complaint named all the Project Veritas Parties as defendants and added allegations concerning Koerber’s claims against Cengage and Koerber’s former supervisors.

On July 7, 2017, the Project Veritas Parties filed proposed orders granting their motions to quash service of summons and the original complaint. On July 14, 2017, the court signed and entered the proposed orders. Counsel for the Project Veritas Parties served Koerber with notice of entry of the orders on August 16, 2017.

On October 10, 2017, Koerber filed a notice of appeal.⁴

⁴ In late October 2017, after Koerber filed her notice of appeal, Project Veritas filed a special motion to strike all of Koerber’s claims against it in the first amended complaint under section 425.16 (anti-SLAPP motion). The court granted the anti-SLAPP motion in January 2018. As noted above, we affirmed the court’s order granting the anti-SLAPP motion in *Koerber I*.

DISCUSSION

1. **Koerber's notice of appeal encompasses all the orders granting the Project Veritas Parties' motions to quash.**

As a preliminary matter, the Project Veritas Parties urge us to dismiss Koerber's entire appeal because she did not list the correct date that the orders granting the motions to quash were entered. Alternatively, the Project Veritas Parties contend we should dismiss Koerber's appeal as it relates to the orders granting Project Veritas's, O'Keefe's, and Hartsock's motions to quash because Koerber did not identify those orders in her notice of appeal. These arguments lack merit.

We must liberally construe a notice of appeal in favor of its sufficiency. (Cal. Rules of Court, rule 8.100(a)(2).) "The notice is sufficient if it identifies the particular judgment or order being appealed." (*Ibid.*) " '[N]otices of appeal are not strictly construed, and an appeal will not be dismissed because of a misdescription of the judgment or order to which it relates unless it appears that the respondent has been misled by such misdescription.' " (*Dang v. Smith* (2010) 190 Cal.App.4th 646, 656 (*Dang*).)

In her notice of appeal, Koerber states that she appeals from a judgment or order entered on August 16, 2017. The notice of appeal lists only "Allison Maass, Project Veritas Action Fund" in the box titled "Defendant/Respondent." The proof of service attached to the notice of appeal, however, names Project Veritas, O'Keefe, Hartsock, Action Fund, and Maass. Koerber also checked the box on the notice of appeal indicating she appealed from an order or judgment made appealable under section 904.1, subdivisions (a)(3) through (a)(13). (See § 904.1, subd. (3) [an order granting a motion to quash is appealable].)

Although no order or judgment was entered on August 16, 2017, Koerber's notice of appeal was sufficient to put the Project Veritas Parties on notice of what orders Koerber was appealing. August 16, 2017 is the date the Project Veritas Parties served Koerber with the notice of entry of the orders granting the motions to quash. Nothing in the record indicates that any other order or judgment was entered on or around August 16, 2017. In addition, the civil case information sheet Koerber filed after filing her notice of appeal correctly lists the date on which the challenged orders were entered: July 14, 2017. Under these circumstances, the Project Veritas Parties could not have been misled about which orders Koerber was challenging on appeal. (See *Dang, supra*, 190 Cal.App.4th at p. 656 [notice of appeal listing incorrect entry date for challenged order sufficient to put respondents on notice of what order the appellant challenged because no other order or judgment was entered around the time of the incorrectly listed date].)

The notice of appeal also was sufficient to encompass the orders granting Project Veritas's, O'Keefe's, and Hartsock's motions to quash. Although the first page of the notice of appeal named only Maass and Action Fund as defendants and respondents, the proof of service attached to the notice of appeal listed all the Project Veritas Parties. In addition, the appellant's appendix Koerber filed with her opening brief includes all the orders entered in favor of the Project Veritas Parties, and Koerber's opening brief sets forth separate arguments addressing each of the orders entered in favor of the Project Veritas Parties. On this record, it is clear Koerber intended to appeal each of the five orders granting the motions to quash in favor of the Project Veritas Parties. In any event, the Project Veritas Parties do not

contend they were misled or otherwise prejudiced by Koerber naming only Maass and Action Fund on the first page of her notice of appeal.

2. The first amended complaint rendered moot the motions to quash.

The Project Veritas Parties next contend we should dismiss Koerber’s appeal from the orders granting their motions to quash service of summons and the original complaint because Koerber’s filing of the first amended complaint rendered those motions moot. We agree.

Once an amended complaint is filed, it supersedes all prior complaints. (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130 (*State Compensation*).) In other words, after an amended complaint is filed, the original pleading “ceases to have any effect either as a pleading or as a basis for judgment.” (*Id.* at p. 1131.) Consequently, “the filing of an amended complaint moots a motion directed to a prior complaint.” (*Ibid.*) For example, the filing of an amended complaint moots a motion for summary judgment or adjudication attacking the original complaint, a demurrer attacking the original complaint, and, relevant here, a motion to quash service of summons and the original complaint. (See *id.* at p. 1331 [summary adjudication motion]; *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054 [demurrer]; *Naylor v. Superior Court* (2015) 236 Cal.App.4th Supp. 1, 4 [noting the plaintiff’s filing of an amended complaint rendered moot the defendant’s motions to quash service of summons and the original complaint].)

A plaintiff may file an amended complaint at any time with leave of the court. (§ 473.) A plaintiff may also amend a complaint

once as a matter of course “before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike[.]” (§ 472, subd. (a).) But a plaintiff may not amend a complaint without the court’s leave once an anti-SLAPP motion has been filed. (See § 472, subd. (b) [provision allowing amendment of complaint as matter of course does not apply once an anti-SLAPP motion is filed]; *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1280 [a plaintiff may not avoid a ruling on an anti-SLAPP motion by filing an amended complaint in response to that motion].)

Here, nothing in the record shows that any of the Project Veritas Parties had filed an answer responding to the original complaint, or a demurrer or anti-SLAPP motion attacking that complaint, before Koerber filed her first amended complaint. In any event, the Project Veritas Parties do not dispute that Koerber properly filed her first amended complaint.

In addition, by the time Koerber filed her first amended complaint, the court had yet to enter any orders granting the motions to quash. Those motions were filed in March 2017. On June 16, 2017, the court heard argument and issued a minute order directing the Project Veritas Parties to prepare orders granting the motions. A week later, Koerber filed the first amended complaint. The court did not enter its signed orders granting the motions to quash until July 14, 2017, or more than three weeks after Koerber filed the amended complaint. (See *Miller v. Stein* (1956) 145 Cal.App.2d 381, 383–384 [“Unless otherwise required by statute, an order in writing becomes legally effective at the time it is signed and filed by the judge.”].)

Accordingly, once Koerber filed her first amended complaint, the motions to quash were rendered moot, and the July 14, 2017 orders purporting to grant those motions are without legal effect. (*State Compensation, supra*, 184 Cal.App.4th at p. 1131; see also *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 506 [the trial court should have taken the defendant's demurrer to the original complaint off calendar as moot once the plaintiff filed an amended complaint].)

DISPOSITION

Koerber's appeal from the July 14, 2017 orders is dismissed as moot. Each party shall bear its own costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

DHANIDINA, J.

HANASONO, J.*

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