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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALBERT ROBLES,

Plaintiff and Appellant,

v.

WATER REPLENISHMENT
DISTRICT OF SOUTHERN
CALIFORNIA,

Defendant and
Respondent.

B283258

(Los Angeles County
Super. Ct. No. BS163202)

APPEAL from judgment of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Willoughby & Associates, Anthony Willoughby, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Gregory P. Barbee, Laura A. Alexander, for Defendant and Respondent.

Petitioner and appellant Albert Robles appeals from a judgment denying a petition for a writ of mandate to compel defendant and respondent Water Replenishment District of Southern California to provide a defense in an underlying lawsuit. On appeal, Robles contends the District was required to provide him with a defense under Government Code section 995, because the underlying lawsuit was based on acts within the scope of Robles's employment with the District.¹ We conclude substantial evidence supports the trial court's conclusion that the underlying lawsuit arose from Robles's acts as a public officer for the City of Carson. Therefore, we affirm.

FACTS

In November 1992, Robles was elected to serve as a director of the District. He has been continuously re-elected. In 2012, he was elected to a four-year term that expired in November 2016. In March 2013, Robles was elected to the Carson City Council. In March 2015, the other members of the City Council unanimously appointed Robles to serve the balance of a term as Mayor.

On January 25, 2016, the Los Angeles District Attorney filed *People v. Robles* (Super. Ct. L.A. County, 2016, No. BC608075), alleging that as of March 2013, Robles "usurped, intruded into, and unlawfully held and exercised

¹ All further statutory references are to the Government Code unless otherwise stated.

the office of Director of the [District] in violation of Government Code section 1099” “The positions of City Councilmember and Mayor of the City of Carson and Director of the [District] are incompatible under Government Code section 1099 because the [District] and the City of Carson have overlapping territory, duties and responsibilities, and a clash of duties is likely to arise in the exercise of both offices simultaneously.” The District’s jurisdiction includes the City of Carson. Under section 1099, in the event of incompatible offices held by the same individual, the first office is deemed forfeited upon taking the second. The lawsuit sought a judgment declaring Robles was not entitled to hold or exercise the office of director of the District, ordering him ousted, fining Robles \$5,000, and awarding costs to the People.

Robles immediately requested that the District defend and indemnify him. If he were unsuccessful in the underlying litigation, he would lose his seat as a director for the District. The District initially voted to provide a defense, but subsequently voted to rescind the agreement and refused to defend Robles. On May 18, 2016, Robles’s attorney sent the District a demand letter requesting that the District continue to indemnify Robles in connection with the underlying litigation under section 996.4. The District denied the request.

PROCEDURAL BACKGROUND

On June 16, 2016, Robles filed a petition for a writ of mandate to compel the District to defend and indemnify him in the civil action under sections 995 and 996.4. He alleged that he did not have a plain, speedy and adequate remedy in the ordinary course of the law, because he could not afford to fund his defense or retain counsel. Without a proper defense, he would lose his position at the District.

On July 15, 2016, Robles filed an ex parte application for alternative and peremptory writs of mandate. The District opposed the application on the grounds that taking office in Carson did not fall within the scope of Robles's employment with the District, and it would be against public policy to indemnify Robles for illegal political activity.

After a hearing on July 15, 2016, the trial court took the matter under submission. Later that day, the court found the actions that precipitated the underlying lawsuit did not fall within the scope of Robles's duties as a director. The court denied the application for a writ of mandate.

On February 21, 2017, Robles filed a second petition for a writ of mandate to compel the District to indemnify him. The District opposed the petition on the grounds that Robles's actions were not within the scope of his employment, the relief sought was against public policy, and no new facts or law had been alleged to compel a different result from the prior denial of a writ. Robles filed a reply arguing that the petition was not a motion for

reconsideration, because the prior writ application was brought on an emergency ex parte basis.

After a hearing on April 21, 2017, the trial court entered an order denying the petition for writ of mandate. The court found the gravamen of the underlying lawsuit was Robles's conduct in his role for the City of Carson. He did not seek or hold office for the City of Carson at the direction of the District. The District had established the exception to section 995 contained in section 995.2, subdivision (a)(1) applied. Robles failed to demonstrate that the District had a duty to defend him. Robles filed a timely notice of appeal from the judgment.

DISCUSSION

Standard of Review

“A traditional writ of mandate under Code of Civil Procedure section 1085 is used to compel a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews the challenged administrative action to determine whether it was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires.” (*Shelden v. Marin County Employees' Retirement Assn.* (2010) 189 Cal.App.4th 458, 463.)

“In reviewing the trial court's ruling on a writ of mandate, we ordinarily are confined to an inquiry of whether

the findings and judgment of the trial court are supported by substantial evidence. [Citation.] In doing so, we view the evidence in the light most favorable to the prevailing party. [Citation.] We do not substitute our deductions for those made by the trial court. [Citation.] Any issue of statutory interpretation or question of law when the facts are undisputed is reviewed de novo. [Citations.]” (*Los Angeles Police Protective League v. City of Los Angeles* (2014) 232 Cal.App.4th 136, 140–141.)

Duty to Provide a Defense under Section 995

Robles contends the District was required to provide him with a defense under section 995, because the underlying lawsuit was brought against Robles based on conduct within the course and scope of his employment for the District, specifically that he “maintained” his District seat after joining the Carson City Council. “[T]he burden rests upon the public employee to establish that the act or omission was within the scope of employment.” (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1002.) We agree with the trial court’s conclusions that Robles failed to meet his burden and that the underlying lawsuit was not based on an act or omission within the course and scope of his employment with the District.

Section 995 provides in pertinent part: “Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity

shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.”

Section 995.2, subdivision (a) provides: “A public entity may refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the public entity determines any of the following: [¶] (1) The act or omission was not within the scope of his or her employment. [¶] (2) He or she acted or failed to act because of actual fraud, corruption, or actual malice. [¶] (3) The defense of the action or proceeding by the public entity would create a specific conflict of interest between the public entity and the employee or former employee. For the purposes of this section, ‘specific conflict of interest’ means a conflict of interest or an adverse or pecuniary interest, as specified by statute or by a rule or regulation of the public entity.”

Incompatible offices are governed by section 1099, which states in pertinent part: “(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law: [¶] (1) Either of the offices may audit, overrule, remove members of, dismiss employees

of, or exercise supervisory powers over the other office or body. [¶] (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices. [¶] (3) Public policy considerations make it improper for one person to hold both offices. [¶] (b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure. [¶] (c) This section does not apply to a position of employment, including a civil service position.”

In this case, the trial court correctly determined that the act at issue in the underlying lawsuit was Robles’s assumption of office for the City of Carson. Robles’s act in assuming a position with the City of Carson clearly was not within the course and scope of his employment with the District, and therefore the District was entitled to refuse to provide for his defense. (§ 995.2, subd. (a)(1)). Robles’s mere status as a director of the District was not an act or omission by itself that could have given rise to liability under Section 1099, and therefore provides no basis for his claim to a defense. Moreover, Robles identifies no other “act” taken or “omission” made in connection with his role as a director for the District giving rise to the underlying lawsuit. Robles has failed to meet his burden to show that the underlying lawsuit was based upon an act or omission that he made within the course and scope of his employment with the

District. The trial court properly denied the petition for a writ of mandate.

DISPOSITION

The judgment is affirmed. The Water Replenishment District of Southern California is awarded its costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.*

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