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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TYLER S. BREITMAN,

Appellant,

v.

JOSE R. MOLINAR,

Petitioner and Respondent.

B254716

(Los Angeles County
Super. Ct. No. MS009274)

APPEAL from an order of the Superior Court of Los Angeles County,
Robert A. McSorley, Judge. Dismissed.

Kuzyk Law, Marco A. Cosentino and Mark J. Leonardo for Appellant.

No appearance for Petitioner and Respondent.

INTRODUCTION

Tyler S. Breitman purports to appeal from the trial court's order denying his motion to vacate a judgment entered against him. Breitman could have appealed from the judgment that he sought to vacate and, in that appeal, could have raised the claims he advanced in his unsuccessful motion to vacate. But because he failed to prosecute such an appeal, he may not appeal from the denial of his motion to vacate. We therefore dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On March 26,¹ Breitman filed an application for a civil harassment restraining order against Jose R. Molinar (Molinar).² (§ 527.6.)³ The application, filed in the Chatsworth courthouse of the North Valley District of the Los Angeles Superior Court, was assigned case No. PS015161. The matter was set for hearing on April 19.

On March 29, Molinar and his former wife Mary Molinar each filed an application for a civil harassment restraining order against Breitman. (See fn. 2, *ante*.) The applications were filed in Lancaster in the North District of the Los Angeles Superior Court. Molinar's application was assigned case No. MS009274 and his former wife's application was assigned case No. MS009273. Both Molinar cases were set for hearing on April 19 in Lancaster.

In mid-April, Breitman filed a "Notice of Related Case[s]" and an Ex Parte Motion to Consolidate those cases. Breitman urged that his application for a

¹ All dates refer to 2013.

² The facts underlying the application are not relevant to this proceeding.

³ All statutory references are to the Code of Civil Procedure.

restraining order was related to the applications filed by the Molinars. According to Breitman, his and Molinar's applications arose out of a fight that occurred on March 21 and that "[c]ritical witnesses in [each] case will be the two sheriff's deputies who responded to Breitman's call to the police, and who subsequently arrested Molinar." As for the application filed by Molinar's former wife for a restraining order against him, Breitman claimed that her application "alleges 'indirect' harassment" based on the March 21 fight and that it was filed "in retaliation" because he sought a restraining order against her former husband.

On April 17, the trial court (Commissioner Jeffrey M. Harkavy), sitting in the Chatsworth courthouse, ruled upon Breitman's motion to consolidate the three cases as follows:

"The Court orders the above-entitled matter [case PS015161] RELATED to MS009273 and MS009274.

"The lead case shall be PS015161.

"Lancaster cases, MS009273 and MS009274, are ordered transferred to the Chatsworth Courthouse to be heard with PS015161, on May 6, 2013, at 8:30 a.m., in Department F41.

"The Lancaster Court shall retain jurisdiction over MS009273 and MS009274 until April 19, 2013, when both cases are set for hearing in Department A-3, at 8:30 a.m. When the parties arrive on April 19, 2013, in Department A-3, the Court shall notify all parties that the matter is being transferred to the Chatsworth Court, on May 6, 2013, at 8:30 a.m., in Department F41.

"Cases MS009273 and MS009274 shall be transferred immediately after the parties are advised of the transfer and ordered to appear in the Chatsworth Courthouse.

"The above-entitled matter, along with MS009273 and MS009274, are set for hearing on May 6, 2013, at 8:30 a.m., in Department F41."

On April 19, the trial court (Commissioner Robert A. McSorley), sitting in Lancaster, called for hearing the Molinars' applications for a restraining order against Breitman (case Nos. MS009273 & MS009274). The court declined to follow Commissioner Harkavy's order to transfer the two matters to his court for a consolidated hearing with Breitman's application. The court's minute order explains:

“The Court notes that Commissioner Jeffrey M. Harkavy of Department F41 of the Chatsworth Courthouse, North Valley District, requested this matter be transferred to Department F41 for hearing with case number PS015161 ON 5-6-13. However, the Court finds that the North Valley District lacks jurisdiction in this matter, as the events alleged occurred within the jurisdiction of the North District. The Court states that it will proceed with the hearing on today's date.”

Thereafter, the court conducted a hearing on the Molinars' applications. Breitman and both Molinars testified and documentary evidence was presented. The court granted Jose Molinar's application for an injunction against Breitman, finding “clear and convincing evidence to support” it, but denied Mary Molinar's application. The court then transferred the matters “to Department F41, Chatsworth Courthouse, North Valley District, for reference with the aforementioned case number PS015161 [Breitman's application for a restraining order against Molinar].”

On July 12, the trial court conducted a hearing on Breitman's application for a restraining order against Molinar. After taking evidence, the trial court granted Breitman's application.

On December 11, Breitman filed a motion to vacate the judgment that had been entered against him on April 19 on Molinar's request for a restraining order. Breitman contended that the judgment was void. He claimed that the trial court (Commissioner McSorley) exceeded its jurisdiction because it disregarded

Commissioner Harkavy's prior order consolidating the cases and directing that they be heard on May 6 along with Breitman's application for a restraining order. Breitman also urged that because he had believed that no hearing would be conducted on April 19, he had not brought his witnesses or attorney with him to that day's proceeding.

The trial court (Commissioner McSorley) denied Breitman's motion to vacate the judgment. This appeal of that order follows.⁴

DISCUSSION

The general principle is that an appeal does not lie from a denial of a motion to vacate a judgment if the prior judgment was appealable and the grounds on which vacation is sought existed before entry of judgment. In that instance, the correctness of the judgment can be reviewed only on an appeal from the judgment itself. (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576.)

Here, the April 19th judgment—the entry of an injunction against Breitman in favor of Molinar—was appealable. (§ 904.1, subd. (a)(6) [an appeal may be taken from an order granting an injunction].) Further, the grounds upon which Breitman sought to vacate the injunction (the trial court improperly disregarded the earlier ruling consolidating the cases and Breitman's alleged inability to properly defend against Molinar's application) all existed before the trial court entered judgment against Breitman. Thus, the claims raised in Breitman's motion to vacate (which are the same claims Breitman attempts to pursue on this appeal) could have been raised in an appeal from the judgment entered on April 19. Breitman, however, did not file an appeal from the April 19 judgment. To allow

⁴ Molinar did not file opposition to Breitman's motion to vacate and has not filed a respondent's brief in this appeal.

Breitman to appeal from the trial court's denial of his motion to vacate the judgment would, in effect, give him an unwarranted extension of time to appeal. (*Payne v. Rader*, *supra*, 167 Cal.App.4th at p. 1576.)

Breitman concedes that "one ordinarily cannot appeal from an order denying a motion to vacate judgment" but urges that a recognized exception to that rule applies to his case: the April 19 judgment is void because the trial court lacked jurisdiction to enter it. (See, e.g., *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 691 [proper to appeal from denial of a motion to vacate if the underlying judgment is void because the denial gives effect to a void judgment].) Specifically, Breitman contends that on April 19, the trial court "exceeded its jurisdiction by ignoring the [April 17] Related Cases Order and going forward with the trial [on Molinar's request to enter an injunction against Breitman] to [Breitman's] detriment." We disagree.

"A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant. [Citations.]" (*County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110.) None of those conditions exists in this case. It is undisputed that the trial court could exercise personal jurisdiction over Breitman: Molinar had validly served Breitman with his application for the restraining order and Breitman subsequently participated in the hearing on that application. Further, the North District of the Los Angeles Superior Court had subject matter jurisdiction over the action: a request, made pursuant to section 527.6, to enter a civil harassment restraining order. And since the trial court had both subject matter and personal jurisdiction, it had the authority to grant the requested relief: entry of an injunction.

To support a contrary conclusion, Breitman urges that the trial court's decision to disregard the earlier consolidation order constitutes an act in excess of

jurisdiction. Not so. “The leading case is *Williams v. Superior Court* (1939) 14 Cal.2d 656, which . . . instructs that the jurisdiction of a multijudge, multidepartment superior court is vested in the court as a whole and if one department exercises authority in a matter which might properly be heard in another such action, although ‘irregula[r],’ it does not amount to a defect of jurisdiction.” (*Shane v. Superior Court* (1984) 160 Cal.App.3d 1237, 1249.) Thus, even if Commissioner McSorley erred when he chose not to follow Commissioner Harkavy’s consolidation order (a finding we do not make),⁵ that error did not deprive him of jurisdiction to rule upon Molinar’s application.

Because Breitman’s appeal does not lie, we dismiss it.

DISPOSITION

The purported appeal, filed February 21, 2014, from the trial court’s January 10, 2014 order denying Breitman’s motion to vacate the judgment, is dismissed.

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WILLHITE, Acting P.J.

We concur:

MANELLA, J.

COLLINS, J.

⁵ Because the judgment entered by Commissioner McSorley is final, there is no reason to decide whether he erred. Any such discussion would be an academic inquiry into what is now a moot point.