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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRIS TORRES et al.,

Plaintiffs and Appellants,

v.

THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA et al.,

Defendants and Respondents.

B287436

(Los Angeles County
Super. Ct. No. SC123494)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Dismissed.

Hoyt E. Hart II, for Plaintiffs and Appellants.

Cole Pedroza, Kenneth R. Pedroza and Matthew S. Levinson; Law Offices of Michael D. Gonzalez, Michael D. Gonzalez and Andrea Vazquez for Defendant and Respondent.

I. BACKGROUND

On December 10, 2014, spouses Phyllis McQuilliams and William Holloway filed a complaint alleging medical malpractice against two hospitals and a doctor.¹ The alleged malpractice concerned uncontrolled bleeding and related complications McQuilliams suffered following hip replacement surgery performed by the doctor at one of the hospitals, and deficiencies in McQuilliams's subsequent treatment at the other hospital. In the complaint, Holloway also asserted a loss of consortium claim against all defendants and McQuilliams asserted a medical battery claim against the doctor and the hospital where the surgery took place.

McQuilliams died on December 14, 2014. On January 21, 2015, Chris Torres, McQuilliams's son, and Holloway (plaintiffs) filed a first amended complaint recasting the medical malpractice and medical battery claims as survivor actions, adding a wrongful death claim against all defendants, and reasserting Holloway's loss of consortium claim. On July 18, 2016, after filing second and third amended complaints,² plaintiffs filed a doe amendment naming defendant and

¹ None of these defendants is a party to this appeal.

² The second and third amended complaints included a third hospital; three additional doctors; and a certified registered nurse anesthetist, Richard A. Paulsen, as defendants—presumably added through doe amendments. None of these defendants is a party to this appeal.

respondent Nadim Sarkies, M.D., as a defendant in the third amended complaint.³

On February 8, 2017, plaintiffs filed a fourth amended complaint that included Sarkies and Paulsen as defendants. The fourth amended complaint again asserted the survivor claims for medical malpractice and medical battery, wrongful death, and loss of consortium claims.

Sarkies moved for summary judgment on the fourth amended complaint on the ground that each of plaintiffs' causes of action was barred by the applicable statute of limitations. The hearing on the motion began on August 16, 2017. On August 29, 2017, the trial court granted summary judgment.

On September 18, 2017, trial commenced against Paulsen, the sole remaining defendant. On September 25, 2017, the jury returned a verdict in Paulsen's favor.

On September 29, 2017, the trial court entered judgment in favor of Sarkies. Sarkies appears to concede that he did not serve notice of entry of the judgment on plaintiffs. On October 17, 2017, the trial court entered judgment in favor of Paulsen.

On December 19, 2017, plaintiffs filed their notice of appeal. The notice of appeal states that plaintiffs appeal "from the Judgment on Special Verdict, October 17, 2017 and from the notice of entry of judgment thereon entered on October 27, 2017. Notice of entry of Judgment was served by defendant on October 27, 2017."

³ Although the doe amendment purports to amend the "Complaint," the then operative pleading was the third amended complaint.

The notice of appeal also states plaintiffs’ intention to proceed by an appendix in lieu of a clerk’s transcript. It designates as the reporter’s transcript on appeal, “All arguments, discussions, conference, and colloquies between counsel and between counsel and the Court in the Trial proceedings held in this Court from August 16, 2017, through September 26, 2017.”

II. DISCUSSION

A notice of appeal must be filed the earlier of 60 days after the superior court clerk or a party serves notice of entry of judgment or 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1)(A)-(C).) “If a judgment or order is appealable, an aggrieved party *must* file a *timely* appeal or forever *lose* the opportunity to obtain appellate review.’ [Citation.]” (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46 (*Norman I. Krug*); *Sharp v. Union Pacific R.R. Co.* (1992) 8 Cal.App.4th 357, 361 [“neither mistake, inadvertence, accident, misfortune, estoppel nor waiver can afford relief from the jurisdictional necessity of filing a timely notice of appeal”].)

Plaintiffs’ December 19, 2017, notice of appeal specifically refers to the October 27, 2017, judgment entered after the trial against Paulsen.⁴ The notice of appeal does not refer to the September 29, 2017, judgment entered after the trial court granted Sarkies’s motion for summary judgment. Because the Sarkies judgment was entered on September 29, 2017, the outside date for filing a notice of appeal concerning that judgment

⁴ Plaintiffs and Paulsen reached a resolution to plaintiffs’ appeal which we dismissed at plaintiffs’ request.

was March 28, 2018, and the time for plaintiffs to appeal the judgment has passed.

“[N]otices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.’ [Citations.]” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272; Cal. Rules of Court, rule 8.200(a)(2).) “Despite the rule favoring liberal interpretation of notices of appeal, a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed.’ [Citation.]” (*Norman I. Krug, supra*, 220 Cal.App.3d at p. 47.) It is not reasonably clear from plaintiffs’ designation of the reporter’s transcript for the summary judgment hearing that plaintiffs were trying to appeal from the Sarkies judgment—a determination supported by plaintiffs’ claim in their opposition to Sarkies’s motion to dismiss their appeal that they had no knowledge of the Sarkies judgment.⁵

⁵ In a declaration in support of plaintiffs’ opposition to Sarkies’s motion to dismiss plaintiffs’ appeal, plaintiffs’ counsel declares that “Dr. Sarkies did not serve his proposed judgment on me or my office when it was submitted to the court I was completely unaware of Dr. Sarkies’ separate judgment until I spoke to his appellate counsel in July 2018.” Attached as an exhibit to Sarkies’s reply brief is a copy of the proof of service on plaintiff’s counsel for Sarkies’s “[PROPOSED] JUDGMENT ON MOTION FOR SUMMARY JUDGMENT.”

III. DISPOSITION

The appeal is dismissed. Respondents are entitled to recover their costs on appeal.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.