Filed 5/5/17 Anderson v. Los Angeles Unified School Dist. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| RONALD BLAGDEN ANDERSON, SR., | B262652, B268454 |
| Plaintiff and Appellant, | (Los Angeles County Super. Ct. No. BC513173) |
| v. | |
| LOS ANGELES UNIFIED SCHOOL DISTRICT et al., | |
| Defendants and Respondents. | |

APPEALS from orders of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Ronald Blagden Anderson, Sr., in pro. per., for Plaintiff and Appellant.

Alexander Molina and Marcos F. Hernandez for Defendants and Respondents.

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Appellant Ronald Blagden Anderson, Sr., challenges the trial court's order granting the motion to strike his first amended complaint (FAC) in its entirety against both respondents and the trial court's order granting an award of attorney fees to respondent Los Angeles Unified School District (LAUSD) pursuant to Code of Civil Procedure section 425.16, subdivision (c). On February 17, 2016, we issued an order consolidating Anderson's two appeals for the purpose of one brief, oral argument, and decision. We affirm both orders.

**BACKGROUND**

Anderson's FAC alleges that he was employed as a certificated substitute teacher by the LAUSD beginning in 1997. On December 14, 2011, he provided substitute teacher services for a fourth grade class at Bradley Elementary School. In his FAC, Anderson alleges that he was engaged to act as a substitute in a fourth grade classroom, and that "[w]hile calling the roll, [he] could determine that several female students had diagnosed and undiagnosed mental and emotional issues," based upon his experience "visiting hundreds of classrooms and observing thousands of students." The FAC asserts that in this classroom "the female students would present the greatest misconduct challenges," and that the regular classroom teacher failed to provide him with a lesson plan, resulting in the day being hectic. Anderson states that after lunch he complimented several of the girls, who were wearing red dresses for a program, stating that they "looked beautiful in their red Christmas dresses." At the end of the school day, Anderson was called to Principal Genevieve Shepherd's office, where he alleges that he was "confronted by a standing-room only group of estrogen-laden females of various

ages," that he was "the only person in this unlawful assembly bearing testosterone," and that it was apparent that "this unlawful assembly was for malicious purposes and to accomplish an unlawful objective." Anderson was told that girls in the class felt uncomfortable with his comments, and a week later Shepherd issued an "Inadequate Service Report" to Anderson, which included a statement that the meeting between Anderson and Shepherd constituted a conference between them. Anderson disagreed that the meeting constituted such a conference and filed a grievance pursuant to the applicable collective bargaining agreement.

Anderson's FAC alleges claims for racial discrimination against LAUSD; gender discrimination against LAUSD; invasion of privacy against Shepherd; intentional infliction of emotional distress against Shepherd; defamation against both respondents; violation of Education Code section 44031 against both respondents in each case, relating to the disciplinary action taken on the day Anderson provided substitute teacher services; and intentional disclosure of personal information, relating to the inclusion of Anderson's personnel record in a motion for summary judgment filed by two LAUSD attorneys in an unrelated case.

The trial court granted respondents' motion to strike the FAC in its entirety on January 13, 2015. It granted respondents' motion for attorney fees on July 22, 2015. These appeals followed.

## DISCUSSION

### *Anti-SLAPP Motion*

The anti-SLAPP statute "provides a method for summary disposition of meritless lawsuits intended ' "to chill or punish a party's exercise of constitutional rights to free speech and to

petition the government for redress of grievances." ' " (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 447.) " ' "SLAPP is an acronym for 'strategic lawsuit against public participation." ' " (*Ibid.*)

"The Legislature enacted the anti-SLAPP statute in 1992 in response to concerns about 'a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' [Citation] The statute is designed to deter such lawsuits—termed 'strategic lawsuits against public participation' or 'SLAPP suits'—in order to 'encourage continued participation in matters of public significance' and to ensure 'that this participation should not be chilled through abuse of the judicial process.' " (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 321 (*Barry*).)

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b).) A ruling on a section 425.16 motion to strike is reviewed de novo. (*Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1544.)

Analysis of an anti-SLAPP motion is a two-step process. " ' "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether

the plaintiff has demonstrated a probability of prevailing on the claim." ' " (*Barry, supra,* 2 Cal.5th at p. 321.) Here, the trial court concluded that the first six causes of action arose from the "protected activities of investigating student complaints."[1] The court concluded that the seventh cause of action arose from "activity that occurred during the judicial proceedings." (See *G.R. v. Intelligator* (2010) 185 Cal.App.4th 606, 617.)

As a result of these conclusions, the burden shifted to Anderson to demonstrate a probability of prevailing on his claims. The court determined that Anderson could not demonstrate a probability of prevailing. With respect to the first six claims, respondents' actions were privileged "official proceedings authorized by law" pursuant to Civil Code section 47, subdivision (b)(3). Respondents are entitled to the immunity provisions of Government Code sections 821.6, 820.2, and 815.2, in that the actions taken with respect to disciplining Anderson were discretionary, taken in the performance of their official duties. With respect to the seventh cause of action, the court determined that the actions taken fall within the litigation privilege. (Civ. Code, § 47, subd. (b)(2).)

On appeal, Anderson does not challenge these findings. To the contrary, he argues that the motion to strike filed by the

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[1] Protected conduct under Code of Civil Procedure section 425.16 includes statements made in connection with an issue under consideration in an "official proceeding authorized by law." (Code Civ. Proc., § 425.16, subd. (e)(2).) Informal meetings by school officials concerning complaints about teachers can qualify as "official proceedings" for purposes of that section. (*Lee v. Fick* (2005) 135 Cal.App.4th 89, 96–97.)

"miscreant defendants is tantamount to a motion for summary judgment and motion to dismiss without providing" him with the opportunity to conduct discovery. He contends that the FAC should be permitted to proceed even if it cannot survive an anti-SLAPP motion to strike. He cites no authority for this contention.

In order to satisfy Anderson's obligation to demonstrate a probability of prevailing on the merits of the FAC, he "must state and substantiate a legally sufficient claim [citation], thereby demonstrating his case has at least minimal merit. [Citation.] [¶] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 211.) Anderson makes no such showing. Accordingly, we affirm the order granting the motion to strike Anderson's claims.

***Award of Attorney Fees***

Anderson focuses his brief on the order awarding attorney fees to respondent LAUSD. Fees awarded pursuant to Code of Civil Procedure section 425.16 are reviewed for an abuse of discretion. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1130.)

Anderson makes several arguments challenging the award generally, citing the discretionary nature of an attorney fee award under the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.; *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 105) and employing the tests and required findings relating to such an award. The award of attorney fees in this case, however, was made pursuant to the anti-SLAPP statute, which provides for a mandatory rather than

a discretionary award of attorney fees. A defendant that successfully moves to strike a plaintiff's cause of action utilizing the anti-SLAPP process "is entitled to attorney's fees and costs under Code of Civil Procedure section 425.16, subdivision (c). This understanding of the scope of the anti-SLAPP's fee-shifting provision is consistent with its apparent purpose: namely, compensating the prevailing defendant for the undue burden of defending against litigation designed to chill the exercise of free speech and petition rights." (*Barry*, *supra*, 2 Cal.5th at pp. 327–328.)

Anderson also argues that the fees claimed by respondents were excessive and included fees for unrelated matters, including paralegal time. The evidence provided by Anderson, however, demonstrates that the motion for attorney fees filed by respondents included entries only for work completed in connection with the anti-SLAPP motion and the motion for attorney fees. (See *Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1141.) The court's conclusion that the requested amount of $13,822.00 is reasonable, therefore, was not an abuse of discretion.

## DISPOSITION

The orders are affirmed. Respondents shall recover costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.