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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MARK F. ADAMS et al., Plaintiffs and Appellants, v. AMIR SEDADI et al., Defendants and Respondents.	B233508 (Los Angeles County Super. Ct. No. SS020383)

APPEAL from an order of the Superior Court of the County of Los Angeles, Gerald Rosenberg, Judge. Affirmed.

Mark F. Adams, Manoah F. Adams, and Dorothee M. Adams in pro. per. for Plaintiffs and Appellants.

Office of the City Attorney, Carmen A. Trutanich, and Michael D. Nagle for Defendants and Respondents.

INTRODUCTION

Petitioners and appellants Mark Adams, Dorothee Adams, and Manoah Adams (petitioners) filed an amended petition seeking injunctive relief and an alternative writ of mandate based on a prior impoundment of their motor home[1] and parking citations issued by respondent City of Los Angeles (City). At the hearing on the petition, petitioners clarified that they were seeking a permanent injunction against the City prohibiting it from towing and impounding their vehicle under Vehicle Code section 22651, subdivision (i)[2] based on contested parking citations, as well as a declaratory judgment interpreting section 22651, subdivision (i).[3] The trial court denied their requests for injunctive and declaratory relief and dismissed their petition, a ruling that petitioners now challenge on appeal by raising four contentions.

We hold that petitioners forfeited the first two of their contentions on appeal by not raising them in the trial court and that the trial court did not abuse its discretion in denying the request for an injunction because petitioners failed to demonstrate that the alleged unauthorized seizure of their vehicle was likely to recur in the future. We further hold that the request for declaratory relief was also properly denied because there was no

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[1] The motor home was registered in petitioner Mark Adams's name, but his wife and son, petitioners Dorothee and Manoah Adams also claimed an interest in the vehicle.

[2] All further statutory references are to the Vehicle Code unless otherwise specified.

[3] Section 22651, subdivision (i) provides in pertinent part: "A peace officer. . . or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances: [¶] . . . [¶] (i) [¶] (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violations, ..."

actual controversy between the parties at the time of the hearing on the petition. We therefore affirm the order from which petitioners appeal.

FACTUAL BACKGROUND

On September 8, 2009, petitioners purchased a motor home, which they parked in West Los Angeles. Because the vehicle did not have a front license plate when purchased, petitioners almost immediately began receiving citations (front license plate citations) that they contested with the City on the grounds that a front license plate was not required for their vehicle. Petitioners eventually received a total of 21 citations, many of which were issued because their vehicle did not display a front license plate.

On December 3, 2010, the City towed petitioners' vehicle to a Valley police storage facility. On December 8, 2010, a hearing examiner for the City conducted a hearing regarding the impoundment of petitioners' vehicle that had been towed and impounded pursuant to section 22651, subdivision (i). On December 9, 2010, the hearing examiner found that there was no probable cause for towing petitioners' vehicle pursuant to section 22651, subdivision (i). According to the hearing examiner, she had conducted an investigation concerning the seizure of the vehicle and determined that a clerical error had resulted in an improper impoundment of the vehicle. The hearing examiner advised petitioners that they would not be responsible for towing and storage fees and explained the procedure for obtaining the release of their vehicle.

On December 23, 2010, petitioners filed a petition for release and return of an illegally seized vehicle and peremptory writ of mandate. On January 3, 2011, petitioner Mark Adams appeared at the hearing examiner's office and explained that he had not been able to obtain the release of petitioners' vehicle because he did not have a current registration tag. The hearing examiner then assisted petitioner Mark Adams in obtaining the release of the vehicle. On January 5, 2011, the hearing examiner waived additional storage fees, and petitioner Mark Adams then retrieved petitioners' vehicle from the police storage facility.

On January 5, 2011, the hearing examiner contacted the independent contractor that administered parking violations for the City to ensure that the hold placed on the vehicle's registration by the Department of Motor Vehicles would be removed. On January 13, 2011, six of the front license plate citations were cancelled.

On February 4, 2011, the hearing examiner reviewed records that indicated that petitioners had not registered their vehicle, and that the vehicle had received three citations in January 2011 for failure to display current registration tags (registration tag citations). The hearing examiner spoke to petitioners Mark and Manoah Adams about their vehicle's registration status and was informed that petitioners were unaware the hold on the vehicle's registration had been released. Petitioners subsequently registered their vehicle and the hearing officer cancelled the three registration tag citations.

Following the release of their vehicle, petitioners filed a first amended petition for injunctive relief and alternative writ of mandate to, in effect, prevent a future wrongful impoundment of the vehicle. On February 18, 2011, petitioners filed an ex parte application for a preliminary injunction that the trial court denied on March 10, 2011.

On May 2, 2011, the trial court held an evidentiary hearing on petitioners' request for a permanent injunction. During the hearing, the City's hearing examiner confirmed for the trial court that, at the time of the hearing, there were five unresolved parking citations involving petitioners' vehicle—four front license plate citations and a parking citation for leaving the vehicle parked in the same location for more than 72 hours (72 hours citation). The hearing examiner also confirmed that a total of 13 front license plate citations had been issued by the City since petitioners purchased their vehicle in September 2009. After a discussion with the trial court, the parties were able to resolve all five of the outstanding citations.[4]

Although all present controversies between the parties appeared to have been resolved during the hearing, petitioners nevertheless argued that they were entitled to a

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[4] The four front license plate citations were cancelled because petitioners had obtained a front plate, and the parties agreed to resolve the remaining 72 hours citation through an administrative hearing process.

permanent injunction against the City preventing it from impounding their vehicle under section 22651, subdivision (i) unless and until the issue of the City's right to impound was resolved by a trial court. Petitioners also argued that they were entitled to a declaratory judgment interpreting section 22651, subdivision (i).

After hearing argument, the trial court denied the request for injunctive relief because petitioners had failed to demonstrate a sufficient threat of future harm. The trial court also denied the request for declaratory relief on the ground that there was no actual controversy between the parties upon which a declaration of rights and obligations under section 22651, subdivision (i) could be based.

DISCUSSION

A. Forfeiture

Petitioners contend that the trial court violated their due process rights at the permanent injunction hearing by restricting their ability to present fully their case. They further contend that the trial court erred when it denied their claim for injunctive relief on the ground that the court had no power to enjoin a municipality. Because neither of these contentions was raised during the permanent injunction hearing, the City maintains that petitioners have forfeited those contentions.

"The forfeiture rule generally applies in all civil and criminal proceedings. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, pp. 458-459; 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Reversible Error, § 37, pp. 497-500.) The rule is designed to advance efficiency and deter gamesmanship. As we explained in *People v. Simon* (2001) 25 Cal.4th 1082 [108 Cal.Rptr.2d 385, 25 P.3d 598] (*Simon*): '"'"The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had . . . ."' [Citation.] '"No procedural principle is more familiar to this Court than that a *constitutional* right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a

tribunal having jurisdiction to determine it." . . .' [Citation.] [¶] 'The rationale for this rule was aptly explained in *Sommer v. Martin* (1921) 55 Cal.App. 603 at page 610 [204 P. 33] . . . : "'In the hurry of the trial many things may be, and are, overlooked which would readily have been rectified had attention been called to them. The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.'"' [Citation.]" (Fn. omitted; [citations].)' (*Simon, supra*, 25 Cal.4th at p. 1103, italics added, fn. omitted.)" (*Keener v. Jeld-Wen, Inc*. (2009) 46 Cal.4th 247, 264-65.)

The transcript of the permanent injunction hearing confirms that petitioners did not suggest or imply to the trial court that their ability to present their case fully was being restricted in any way. Similarly, although it does not appear that the trial court based its denial of injunctive relief on the City's status as a municipality, petitioners did not raise that issue with the trial court in any event. Had they raised either issue with the trial court and the City, the court could have addressed them by, for example, affording petitioners additional time to present their case and by clarifying whether the court was denying the injunction based on the City's status as a municipality. That petitioners appeared pro. per. at the hearing on their petition does not alter this conclusion because pro. per. litigants must comply with the same procedural rules that apply to represented parties. (*People v. $17,552.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084.) Because neither contention was raised and addressed in the trial court, they have been forfeited on appeal.

B. Injunction

Petitioners contend that the trial court abused its discretion when it denied their request for a permanent injunction against the City on the ground that petitioners had not demonstrated a sufficient threat of future harm. According to petitioners, their evidence

showed that there was a substantial threat that the City would impound their vehicle in the future based on asserted violations of section 22651, subdivision (i).

"'A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action . . . against a defendant and that equitable relief is appropriate.' [Citation.] The grant or denial of a permanent injunction rests within the trial court's sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.] The exercise of discretion must be supported by the evidence and, 'to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, [we] review such factual findings under a substantial evidence standard.' [Citation.] We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge all reasonable inferences to support the trial court's order." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390.)

"Injunctive relief is available to prevent future harm, not to address past harm. 'An injunction is authorized only when it appears that *wrongful* acts are likely to recur.' (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402 [5 Cal.Rptr.3d 137], italics added.)" (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 873.)

Here, there was no evidence before the trial court that the alleged wrongful act—the unauthorized seizure of petitioners' vehicle—was likely to recur. By the time of the hearing, all outstanding citiations issued to petitioners had been resolved. And, petitioners had obtained a front license plate and a current registration tag. Thus, there was no basis to conclude that petitioners' vehicle would continue to be cited based on those two types of violations.

Moreover, the hearing examiner confirmed under oath in her declaration that she had identified the problem that resulted in the improper seizure of petitioners' vehicle and had taken steps to resolve the problem. Therefore, there was no reasonable basis upon which the trial court could have concluded that the City would again impound petitioners' vehicle based on the problem that caused the first seizure.

In addition, the undisputed evidence showed that from the time of the December 9, 2010, seizure of petitioners' vehicle to the date of the May 2, 2011, hearing, the City had not attempted or threatened to impound petitioners' vehicle for any reason, much less because there were five or more outstanding but contested citations. Absent such evidence, the trial court properly could conclude that the single seizure of the vehicle in December 2010 was insufficient to support a reasonable factual inference that similar seizures would recur in the future. Accordingly, the trial court did not abuse its discretion in denying the requested permanent injunctive relief.

C. Declaratory Relief

Petitioners final argument is that the trial court abused its discretion when it refused to make a declaration of the parties' respective rights and obligations under section 22651, subdivision (i). From petitioners' perspective, the evidence showed that there was an actual controversy with the City over the proper interpretation of section 22651, subdivision (i).

"'An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law.' (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723 [45 Cal. Rptr. 2d 752].)" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) "'The fundamental basis of declaratory relief is the existence of an *actual, present controversy* over a proper subject.' (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 817, p. 273.)" (*Ibid.*)

"Code of Civil Procedure section 1060, which provides that a court '*may* make a binding declaration' (italics added) of a litigant's rights or duties, must be read together with section 1061, which states: 'The court may refuse to [grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.' (Code Civ. Proc., § 1061.) 'The trial court's decision to entertain an action for declaratory relief is reviewable for abuse of discretion. [Citation.]' (*Filarsky*

v. Superior Court (2002) 28 Cal.4th 419, 433 [121 Cal.Rptr.2d 844, 49 P.3d 194].) This discretion is not boundless: 'Where . . . a case is properly before the trial court, under a complaint which is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is entirely appropriate, the trial court may not properly refuse to assume jurisdiction . . . .' (*Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 762 [161 P.2d 217].)" (*Meyer v. Sprint Spectrum, L.P.* (2009) 45 Cal.4th 634, 647.)

"'"The purpose of a declaratory judgment is to 'serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.'" (*Maguire v. Hibernia S. & L. Soc*. (1944) 23 Cal.2d 719, 729 [146 P.2d 673].) "Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation [citation]." (*Bess v. Park* (1955) 132 Cal.App.2d 49, 52 [281 P.2d 556].)' (*In re Claudia E*. (2008) 163 Cal.App.4th 627, 633 [77 Cal.Rptr.3d 722].) '"One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff's future conduct in order to preserve his legal rights."' (*American Tel. & Tel. Co. v. California Bank* (1943) 59 Cal.App.2d 46, 55 [138 P.2d 49].)" (*Meyer v. Sprint Spectrum, L.P., supra,* 45 Cal.4th at p. 647.)

During the permanent injunction hearing, all the current controversies between the petitioners and the City concerning outstanding citiations as well as the seizure and registration of their vehicle had been resolved. And, the City, through its hearing examiner, had taken steps to identify and resolve the problem that resulted in the seizure of their vehicle in the first instance. Thus, there was no present controversy upon which the trial court could have made a declaration of the parties' respective rights and obligations under section 22651, subdivision (i). Moreover, given the hearing examiner's declaration, it was not clear at the hearing that the City fundamentally disagreed with petitioners' interpretation of section 22651. Absent an actual controversy, the trial court did not abuse its discretion in refusing to issue an advisory opinion on the proper interpretation of section 22651, subdivision (i).

DISPOSITION

The order of the trial court denying injunctive relief and declaratory relief is affirmed. No party is entitled to costs on appeal.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.