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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

STEPHEN A.C. PARNELL,

Plaintiff and Appellant,

v.

OLIVIA LESICK et al.,

Defendants and Respondents.

B290931

(Los Angeles County
Super. Ct. No. BC696740)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Law Office of Thomas S. Byrnes and Thomas S. Byrnes for Plaintiff and Appellant.

Hannemann Law Firm and Brian G. Hannemann for Defendant and Respondent Olivia Lesick.

Law Offices of Dilip Vithlani and Dilip Vithlani for Defendant and Respondent Milon Pluas LLP.

Appellant Stephen A.C. Parnell, M.D., brought this action for malicious prosecution against respondent Olivia Lesick and her former attorneys, respondent Milon Pluas LLP, after Lesick had sued him and others for employment discrimination but later dismissed him as a defendant. Respondents filed special motions to strike appellant's complaint under Code of Civil Procedure section 425.16¹ (anti-SLAPP motions), and the trial court granted their motions. Appellant now challenges these rulings. Finding that appellant has forfeited essential contentions on appeal, we affirm.

BACKGROUND

A. The Parties and Lesick's Underlying Action

Appellant is the majority owner and President of the Board of Directors of Centinela Valley Endoscopy Center (CVEC). Respondent Lesick worked for CVEC as a nurse for about two years until she was terminated in 2014 while on medical leave.

Represented by respondent law firm Milon Pluas, Lesick subsequently sued CVEC, appellant, and others, asserting various causes of action based on theories of disability discrimination and failure to accommodate under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.; FEHA). Lesick's complaint alleged appellant was

¹ Undesignated statutory references are to the Code of Civil Procedure.

CVEC's alter ego and sought to hold him jointly and severally liable for any judgment against the entity.² However, the complaint asserted its causes of action against all defendants, including appellant, and alleged they had all engaged in unlawful conduct.

The case proceeded to trial before Judge Terry A. Green. After the beginning of trial, Lesick voluntarily dismissed appellant as a defendant without prejudice. Following trial, the jury found for Lesick as against CVEC and awarded her substantial damages. The court entered judgment on the verdict. Appellant subsequently moved for defense attorney fees and costs under FEHA.³ Judge Green

² “The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. [Citation.] In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation” (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.)

³ At the time of appellant's motion, FEHA permitted courts to award attorney fees and costs to “the prevailing party.” (Former Gov. Code, § 12965, subd. (b).) However, California courts held that a prevailing defendant should be awarded fees “only ‘in the rare case in which the plaintiff's action was frivolous, unreasonable, or without foundation.’” (*Young v. Exxon Mobil Corp.* (2008) 168 Cal.App.4th 1467, 1474.) The Legislature has since amended the relevant statutory provision to incorporate this prerequisite for defense fees and costs under FEHA. (See Gov. Code, § 12965, subd. (b) [“a prevailing defendant shall not be awarded fees and costs unless the court finds the action was

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denied his motion, concluding that naming him as an alter ego defendant was not frivolous, unreasonable, or groundless.

B. Appellant's Malicious Prosecution Action and Respondents' Anti-SLAPP Motions

In 2018, appellant filed this action against respondents, asserting several causes of action, including malicious prosecution. He alleged respondents had wrongfully named and kept him as a defendant in Lesick's FEHA lawsuit as an "individual defendant employer" to harass him and coerce him to settle. Respondents filed separate anti-SLAPP motions shortly thereafter, seeking to strike appellant's entire complaint. They contended that appellant's action was based on protected activity under section 425.16 and had no probability of success on the merits. As to appellant's malicious prosecution claim, respondents argued that Lesick's FEHA action had not terminated in his favor, that it was supported by probable cause, that the interim adverse judgment rule barred appellant's claim, and that appellant could not show respondents acted with malice.⁴ They asserted Lesick sued

frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so"].)

⁴ Under the interim adverse judgment rule, "a trial court judgment or verdict in favor of the plaintiff . . . in the underlying case, unless obtained by means of fraud or perjury, establishes probable cause to bring the underlying action, even though the (Fn. is continued on the next page.)

appellant as the alter ego of CVEC, rather than as an individual employer.

Before filing his opposition to Lesick's anti-SLAPP motion, appellant filed an ex parte application for a continuance of the hearing on the motion and related briefing deadlines, arguing counsel could not adequately and fully prepare appellant's opposition within the original deadline. The trial court, Judge Yvette M. Palazuelos, denied the requested continuance. Appellant later filed his opposition to Lesick's motion one day late, but the court exercised its discretion to consider the late filing. Appellant's opposition to Milon Plusas's anti-SLAPP motion was timely. Respondents filed separate replies.

C. The Trial Court's Ruling

The trial court accepted respondents' arguments and granted their anti-SLAPP motions, striking appellant's complaint. As relevant here, Judge Palazuelos concluded appellant's malicious prosecution claim had no probability of success. She concluded Lesick's dismissal without prejudice of appellant as a defendant in her underlying FEHA action did not constitute termination in his favor. Judge Palazuelos further concluded Lesick's action was supported by probable cause, based on both her determination that the

judgment or verdict is overturned on appeal or by later ruling of the trial court.” (*Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 776 (*Parrish*).)

denial of appellant's motion for attorney fees and costs in that action constituted an interim adverse ruling, and her own assessment of the viability of Lesick's alter ego theory. Finally, Judge Palazuelos found no evidence suggesting respondents acted with malice toward appellant.⁵ Appellant timely appealed.

DISCUSSION

A. Governing Principles

"A SLAPP suit -- a strategic lawsuit against public participation -- seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16 -- known as the anti-SLAPP statute -- to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) "Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by

⁵ Judge Palazuelos concluded that the litigation privilege barred appellant's other causes of action, and thus that they had no probability of success on the merits. Appellant does not challenge the striking of those causes of action.

establishing a probability of success.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

Our Supreme Court has described this second step as “a ‘summary-judgment-like procedure.’” (*Baral v. Schnitt, supra*, 1 Cal.5th at p. 384.) “The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law.” (*Id.* at pp. 384-385.) “We review a trial court’s decision on a special motion to strike de novo.” (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 129.)

B. Analysis

Appellant concedes his malicious prosecution claim arose from protected activity -- Lesick’s underlying FEHA suit against appellant. (See § 425.16, subd. (e)(1) [protected activity includes “any written or oral statement or writing made before a . . . judicial proceeding”]; see also *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 214-215 [malicious prosecution claims always arise from protected activity].) He argues, however, that the trial court erred in concluding he had failed to establish a probability of success on the merits of his claim.

“To establish a cause of action for malicious prosecution, a plaintiff must demonstrate that the prior action (1) was initiated by or at the direction of the defendant and legally terminated in the plaintiff’s favor, (2) was brought without probable cause, and (3) was initiated with malice.” (*Siebel v. Mittlesteadt* (2007) 41 Cal.4th 735, 740.) As noted, the trial court determined appellant had failed to support any of these elements. As particularly relevant here, Judge Palazuelos concluded appellant had failed to show an absence of probable cause for two independent reasons. First, she determined that Judge Green’s denial of appellant’s motion for attorney fees and costs in Lesick’s underlying FEHA suit constituted an interim adverse ruling establishing probable cause for Lesick’s action. (See *Parrish, supra*, 3 Cal.5th at p. 776.) Second, Judge Palazuelos assessed the viability of Lesick’s alter ego theory and found it was supported by probable cause.

On appeal, appellant challenges the trial court’s assessment of the merits of Lesick’s claim, but he does not address the court’s application of the interim adverse judgment rule. He has therefore forfeited any contention in this regard. (See *Goncharov v. Uber Technologies, Inc.* (2018) 19 Cal.App.5th 1157, 1167, fn. 8 [issue not briefed is forfeited].) Because the interim adverse judgment rule was an independent basis supporting the court’s judgment below,

appellant's failure to discuss it is fatal to his appeal.⁶ (Cf. *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 [where trial court granted summary judgment against plaintiff on multiple independent grounds, his failure to brief one of those grounds sufficed to affirm].)

Moreover, while acknowledging malice is an element of a malicious prosecution claim, appellant presents no meaningful argument that respondents acted with malice. Only in the conclusion section of his opening brief does appellant reference this element, stating, without analysis or citation to authority, that certain "outrageous and false declarations" by Lesick "are proof of malice." His failure to develop his argument on this issue constitutes forfeiture. (*Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 521 [contentions unsupported by reasoned argument and citation to authority are forfeited].) Accordingly, we find no error in the trial court's judgment.⁷

⁶ Appellant also asserts the court erred in considering certain inadmissible evidence, refusing to consider certain admissible evidence, and improperly weighing the evidence in granting respondents' anti-SLAPP motions. We need not consider these contentions, as they would have no effect on the trial court's conclusion that an interim adverse ruling precluded appellant's malicious prosecution claim. (See *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 997 [party challenging judgment must demonstrate any error was prejudicial].)

⁷ Appellant seeks to challenge the trial court's denial of his application for a continuance, which he claims prevented him from "properly and fully" preparing his opposition to Lesick's
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DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

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MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.

anti-SLAPP motion. Initially, respondents argue we have no jurisdiction to review this claim because the denial of a continuance is a non-appealable order. But while a ruling on a motion for a continuance is not an appealable order, the failure to grant the requested continuance is reviewable on appeal from the judgment. (*Freeman v. Sullivan* (2011) 192 Cal.App.4th 523, 527.)

As to the merits of appellant's challenge, we observe the trial court considered appellant's late opposition, and he makes no offer of proof as to any additional contention he might have included had the court granted the requested continuance. Because he demonstrates no prejudice from the denial of a continuance, his challenge to the ruling must fail. (See *Freeman v. Sullivan, supra*, 192 Cal.App.4th at p. 528 [absent showing of prejudice, denial of continuance cannot constitute reversible error].)