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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

FRED JACKSON,

Plaintiff and Appellant,

v.

KARIM RASHEED,

Defendant and Respondent.

2d Civil No. B297504
(Super. Ct. No. 17CVP-0219)
(San Luis Obispo County)

Fred Jackson appeals from an order denying his motion for reconsideration of an order granting summary adjudication in his pending medical malpractice case. He also appeals from “all other issues in [the] reconsideration motion.” Because these interlocutory orders are not appealable, we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

Jackson filed a medical malpractice case against Karim Rasheed, M.D., an ophthalmologist. The complaint alleges Rasheed failed to obtain Jackson’s informed consent for eye surgery, and negligently performed the surgery.

Rasheed brought a motion for summary judgment and, in the alternative, summary adjudication. (Code Civ. Proc.,¹ § 437c, subd. (f)(2).) On January 10, 2019, the court granted summary adjudication in favor of Rasheed on Jackson’s cause of action for negligence. The court denied the motion for summary adjudication of the cause of action for battery, finding a triable issue of fact. The court also denied Jackson’s motions for appointment of counsel and for appointment of an expert witness. Jackson appeals.²

On April 10, 2019, the court denied Jackson’s motion for reconsideration. The court also denied Jackson’s request that the court set the amount of damages for the still-pending battery claim.

DISCUSSION

“The existence of an appealable judgment is a jurisdictional prerequisite to an appeal.” (*Jacobs-Zorne v. Superior Court* (1996) 46 Cal.App.4th 1064, 1070 (*Jacobs-Zorne*).) Pursuant to the “one final judgment” rule, interlocutory or interim orders are not themselves appealable, but can be reviewed on appeal from the final judgment. (*Ibid.*; § 906; *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100-1101.)

Summary judgment disposes of all issues in a case and is an appealable final judgment. (§ 437c, subds. (c) & (m)(1).) In contrast, summary adjudication is a ruling upon one or more causes of action, affirmative defenses, claims for damages, or

¹ All further statutory references are to the Code of Civil Procedure.

² Jackson is an incarcerated state prison inmate. He participated in oral argument via teleconference.

issues of duty. (§ 437c, subd. (f)(1).) A ruling on a motion for summary adjudication is an interlocutory ruling and is not appealable, except on appeal from the final judgment, or where summary adjudication effectively disposes of the entire matter. (§§ 904.1, subd. (a)(1), 906; *Jacobs-Zorne, supra*, 46 Cal.App.4th at p. 1071.)

The order granting summary adjudication of the negligence cause of action in this case did not dispose of the entire matter because a triable issue remained on the battery cause of action. Accordingly, the order is not appealable.

A ruling on summary adjudication may be challenged by petition for extraordinary writ. (§ 437c, subd. (m)(1); *Jacobs-Zorne, supra*, 46 Cal.App.4th at p. 1071.) In *Jacobs-Zorne*, an unauthorized appeal was filed seven days after an order granting summary adjudication; the court treated it as a writ petition but denied relief on the merits. In the present case, we decline to treat the notice of appeal as a writ petition because the notice of appeal was filed four months after service of the order granting summary adjudication, well beyond the time limit for a writ petition. (§ 437c, subd. (m)(1).)

Jackson also challenges denial of appointment of an attorney and expert witness. These rulings are not appealable because they are not final judgments. (§ 904.1.)

Jackson also appeals from denial of the motion for reconsideration. Denial of a motion for reconsideration is not separately appealable. It may be considered on appeal from the underlying order only if the underlying order was appealable. (§ 1008, subd. (g).) A nonappealable order cannot be made appealable by making a motion for reconsideration pursuant to section 1008, subdivision (a). (*I. J. Weinrot & Son, Inc. v.*

Jackson (1985) 40 Cal.3d 327, 331.) Because the orders granting summary adjudication and denying appointment of counsel and an expert witness were not appealable, an order denying reconsideration of those orders is not appealable.

In denying Jackson's motion for reconsideration, the court also rejected Jackson's premature request, framed as a request for "declaratory relief," that the court set the amount of damages for his battery cause of action. Because the ruling on that request was not a final judgment, it is not appealable.

DISPOSITION

The appeal is dismissed. Rasheed shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

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TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Fred Jackson, in pro. per., for Plaintiff and Appellant.

Hinshaw, Marsh, Still & Hinshaw, Bradford J.
Hinshaw and Theresa A. Dillard, for Defendant and Respondent.