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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SLING TECHNOLOGIES,
INC.,

Plaintiff and Appellant,

v.

INET, INC.,

Defendant and Respondent.

2d Civil No. B281079
(Super. Ct. No. 56-2015-
00470971-CU-PT-VTA)
(Ventura County)

Sling Technologies, Inc. appeals an order disqualifying its counsel, Eric Woosley and the Law Offices of Woosley & Porter (collectively Woosley) from representing it in this case and the related arbitration. Sling contends the disqualification order is an abuse of discretion because it contains no factual findings; that Woosley did not previously represent Sling's adversary iNet, Inc., doing business as iParq (iParq); that there is no substantial relationship between this matter and a prior matter in which Woosley represented a different entity, iParq LLC (the LLC); and that Woosley did not obtain any

material confidential information from the LLC in the prior matter. We affirm.

FACTUAL AND PROCEDURAL HISTORY

iParq provides hardware and software systems for administering parking lots for universities, hospitals, and municipalities, among others. Todd Fisher is the chief executive officer and chairman of the board of iParq. He was formerly the managing member of the LLC, which was in the same business. Fisher purchased the assets of the LLC, formed iParq, and continued the business in iParq's name.

Sling is made up of former employees of the LLC. Sling provides iParq with information technology development services as an independent contractor.

In about 2005, while the LLC was still operating the business now operated by iParq, one of its members sued the LLC and individual defendants for an accounting and other relief. (*Arthur Fisher v. iParq, LLC*, Santa Barbara County Superior Court Case No. 1166164, the prior matter.) The member alleged Fisher breached his fiduciary duties as the managing member of the LLC. Woosley was trial counsel for the LLC and two individual defendants. George Wittenburg represented Fisher. Woosley and Wittenburg coordinated the defense of the lawsuit. They submitted a joint trial brief and joint posttrial motions. Woosley identified Wittenburg as his "cocounsel" on billing records submitted with his declaration.

The "course of dealing" between Sling and iParq was an issue in the prior matter. Fisher describes it as a significant issue, while Woosley declares its significance was "limited."

After the prior matter concluded, Fisher bought the LLC's assets and formed iNet, which continues the same business

under the name of iParq. Sling continued to provide software services to iParq as an independent contractor.

The current dispute between iParq and Sling arose when Sling complained about iParq's payments, and iParq complained about Sling's performance. Both parties invoked their prior course of dealing to support their positions. Woosley wrote letters to iParq in which he set forth Sling's position. iParq and Fisher objected to Woosley's adverse involvement as a conflict of interest.

The trial court ordered the dispute into contractual arbitration. iParq moved to disqualify Woosley from representing Sling, based on his prior representation of the LLC. In support of the motion, Fisher declared that Woosley was "lead trial counsel" for the defense in the prior lawsuit and spent "many hours" preparing him for trial as the "president and the face of his client iParq."

Fisher declares he and Woosley "spent a lot of time discussing" the "course of dealing" and "workflow" between Sling and iParq so he would be prepared for questioning about it. Fisher states that Woosley "continued his [legal] representation of us" in posttrial matters after Fisher acquired the LLC's assets and that Woosley "was consulted for and gave legal advice on" the purchase of the LLC's assets. He states Woosley continued to bill iParq at iNet's address and was paid by iNet. He states the course of dealing between Sling and iParq has a "central place" in the current dispute, in which iParq contends Sling breached its obligations when it unilaterally changed the workflow pattern between the companies after declaring a "transition" period.

In opposition, Woosley acknowledges that he represented the LLC at trial and in posttrial motions, and that he

and Fisher's counsel jointly prepared court filings. But he declares he only reviewed and edited the joint briefs for form, style, and grammar. He states he was not lead counsel for the defense. He states he never represented Fisher or iNet and "the major portion" of his work for the LLC ended with the trial of the prior matter.

Woosley does not recall if he helped prepare Fisher for his trial testimony. He declares that if he was present during preparation, he did not have a "major role in preparing him since he was not my witness." Woosley states he had "no relationship" with Fisher after the posttrial motions, except to collect fees. He declares he did not know about the sale of the LLC's assets and did not consult with anyone about it.

Woosley declares there was a deliberate decision to have separate counsel for the LLC and Fisher in the prior lawsuit because the plaintiff's side might gain control of the LLC, in which case the "attorney-client privilege would effectively flow to them." He states he "obtained no confidential information from [Fisher], or otherwise, that would assist in the present arbitration." He states "any information concerning the 'course of dealing' . . . [between Sling and the LLC] was learned from Sling personnel . . . not . . . from [Fisher] or anyone associated with [the LLC]." Woosley states the only issue that involved Sling in the prior matter was whether Fisher played a role in the departure of the Sling employees and whether he was profiting from it. The primary "focus of inquiry" at trial, Woosley declares, concerned "the amounts of [the LLC] revenues passing through Sling as its service provider" to determine the LLC's value.

The trial court heard argument on the disqualification motion. The hearing was not transcribed.

(Super. Ct. Ventura County, Local Rules, rule 18.00(E).) A minute order notes that the court considered all briefs and declarations before taking the matter under submission. A minute order issued one week later states simply: “The motion is granted.”

DISCUSSION

We review the trial court’s decision on a disqualification motion for abuse of discretion. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143 (*Speedee*).) “If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court’s express or implied findings supported by substantial evidence.” (*Ibid.*) In exercising its discretion, the trial court “must make a reasoned judgment consistent with the legal principles and policies appropriate to the matter at issue.” (*McPhearson v. Michaels Co.* (2002) 96 Cal.App.4th 843, 851.) The absence of stated reasons for a ruling on a motion does not affect the standard of review. (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1148.) We presume the order is supported by the record. (*Ibid.*) If there is substantial evidence in the record to support the court’s implied findings of fact, the findings will be upheld. (*Ibid.*) We review the conclusion the court reached based upon those findings for abuse of discretion. (*Ibid.*)

We first reject iParq’s contention that the trial court’s order disqualified Woosley from representing Sling in this appeal. “[A]n appeal of an order disqualifying an attorney automatically stays enforcement of the order.” (*URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 887.)

Sling asks us to “vacate” and remand the disqualification order because it lacks factual findings. But no statement of decision is required for a disqualification motion, as Sling concedes. (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1734, fn. 6 (*Responsible Citizens*).)

Sling relies on *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 582 (*Smith*), in which the court held “that trial judges must indicate on the record they have considered the appropriate factors and make specific findings of fact” when deciding disqualification motions. But in *Smith*, the doctrine of implied findings did not apply because the order contained an express error of law and no substantial evidence supported it. The trial court stated its reason for granting the motion was “the smell test,” demonstrating that it did not consider appropriate factors. (*Id.* at p. 580.) And there was “no evidentiary showing” to support the motion. (*Id.* at pp. 579, 582.) Similarly, in *Responsible Citizens*, upon which Sling also relies, the doctrine of implied findings did not apply because the trial court expressed an erroneous legal conclusion. (*Responsible Citizens, supra*, 16 Cal.App.4th at p. 1734.)

Substantial evidence supports the trial court’s implied findings that Sling’s interest is adverse to that of Woosley’s former client, and that Woosley obtained confidential information from his former client that is material to this matter. (Rules Prof. Conduct, rule 3-310.) “A member shall not, without the informed written consent of the . . . former client, accept employment adverse to the . . . former client where, by reason of the representation of the . . . former client, the member has obtained confidential information material to the employment.” (Rules Prof. Conduct, rule 3-310(E).) If the attorney does not

obtain written consent and undertakes to represent the adversary, the former client may disqualify the attorney by showing a “substantial relationship” between the subjects of the prior and the current representations. (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847 (*Cobra Solutions*).) To determine whether there is a substantial relationship between successive representations, a court must first determine whether the attorney had a “direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation.” (*Ibid.*) If the former representation involved such a direct relationship with the client, the former client need not prove that the attorney possesses actual confidential information; the attorney is presumed to possess confidential information if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel. (*Ibid.*)

Attorney-client Relationship

Fisher’s declaration supplies substantial evidence that Woosley formerly represented iNet’s predecessor, the LLC. It also supplies evidence that Woosley represented Fisher as cocounsel in the prior lawsuit. Fisher also declares Woosley represented iNet in three matters after the prior matter concluded. While Woosley declares this is all untrue, and offers evidence to discredit Fisher’s statements, credibility determinations are beyond the scope of appellate review.

Woosley does not demonstrate that Fisher’s statements are false as a matter of law. Woosley declares he never represented Fisher and points out that the trial court found

Fisher breached fiduciary duties to the LLC. But if Woosley was not Fisher's cocounsel in the prior matter, he had a duty to explain this to him. Rule 3-600(D) of the Rules of Professional Conduct provides, "In dealing with an organization's . . . officers, . . . members, . . . or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member" And subdivision (E) of that rule provides that a member may represent both the organization and its constituents, subject to rule 3-310. Woosley declares he "declined to" represent Fisher in the prior matter, but he does not declare whether or how he communicated this to Fisher. The trial court impliedly adopted Fisher's narrative.

Whether an attorney-client relationship exists is a question of law. (*Responsible Citizens, supra*, 16 Cal.App.4th at p. 1733.) But it is the trial court's role to evaluate conflicting evidence and determine the factual basis for that determination. (*Ibid.*) We accept the trial court's implied credibility findings where, as here, they are supported by substantial evidence. (*SpeeDee, supra*, 20 Cal.4th at p. 1143.) Woosley is presumed to have acquired his clients' confidential information from the prior representation. (*Cobra Solutions, supra*, 38 Cal.4th at p. 846.)

Substantial Relationship Between Prior and Current Matters

Substantial evidence also supports a finding that the prior and current matters are substantially related. Fisher declares he and Woosley discussed the course of dealing between Sling and the LLC in preparation for trial. Sling and iParq each

rely on their prior course of dealing to support their positions in this dispute. In particular, iParq contends Sling breached their contract by changing the historic workflow pattern between the parties. In letters to Sling, iParq asserts that Sling was deviating from a well-established course of dealing. iParq argues it relied on the course of dealing between the parties to support the timing of its payments to Sling.

Sling's arbitration briefs are not in the record, but Fisher states that four pages are devoted to "The Historical Relationship between Sling and iNet," and that two pages of a reply brief "were devoted to the facts and arguments pertaining to workflow between the companies." Sling characterizes the current dispute as a simple collection matter, but the trial court could, and implicitly did, conclude otherwise.

Entire Firm Disqualified

iParq sought, and the trial court granted, disqualification of "Eric Woosley and the Law Offices of Woosley & Porter," including Jordan T. Porter. The court did not abuse its discretion by disqualifying all attorneys in the firm. "[W]here an attorney is disqualified because he formerly represented and therefore possesses confidential information regarding the adverse party in the current litigation, vicarious disqualification of the entire firm is compelled as a matter of law." (*Henriksen v. Great American Savings & Loan* (1992) 11 Cal.App.4th 109, 117.)

DISPOSITION

The disqualification order is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Henry J. Walsh, Judge
Superior Court County of Ventura

Law Offices of Woosley & Porter, Eric A. Woosley,
Jordan T. Porter; Law Office of Jordan T. Porter and Jordan T.
Porter, for Plaintiff and Appellant.

Slaughter, Reagan & Cole, James B. Cole and
Jonathan D. Marshall, for Defendant and Respondent.