Filed 10/23/15 Estrada v. Kaiser Found. Hospital CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TERESA ESTRADA, Plaintiff and Appellant, v. KAISER FOUNDATION HOSPITAL, Defendant and Respondent.	B260534 (Los Angeles County Super. Ct. No. PC052278)

APPEAL from a judgment of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Teresa Estrada, in pro. per., for Plaintiff and Appellant.

Gittler & Bradford, Randy A. Berg and Stephen H. Marcus for Defendant and Respondent.

This is the second appeal in this action between appellant Teresa Estrada and respondent Kaiser Foundation Hospital (Kaiser). Estrada appeals from an adverse judgment following the trial court's grant of Kaiser's motion for judgment on the pleadings as to the sole remaining cause of action in the operative third amended complaint (TAC). Although her appellate briefs are difficult to follow, Estrada essentially contends that the trial court erred in granting Kaiser's motion because: (1) she sufficiently alleged a claim for intentional infliction of emotional distress (IIED); (2) she sufficiently alleged entitlement to relief due to Kaiser's alleged violation of Civil Code sections 56.35, and 56.10, subdivision (c); (3) the motion was granted based on the court's equally erroneous grant of Kaiser's underlying motion to have requests for admission (RFA's) deemed admitted, even though Estrada timely provided substantially compliant responses; and (4) the motion was barred by the doctrine of res judicata. We conclude that none of Estrada's contentions has merit, and affirm.

BACKGROUND

In reviewing the propriety of granting Kaiser's motion for judgment on the pleadings, we examine the same allegations as in our prior opinion (*Estrada v. Kaiser Foundation Hospital et al.* (Jan. 24, 2014, B247912) [nonpub. opn.] (Opinion)). No lengthy recitation of historical facts is required by issues raised in this second appeal. We begin by summarizing the facts and procedural history from our Opinion, updating them as necessary.[1] Further factual details relevant to issues on appeal will be presented as necessary in our discussion.

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[1] Although the Opinion was premised on allegations contained in the second amended complaint (SAC), Estrada concedes that the TAC is "an exact copy" of the SAC in all relevant respects. Our prior Opinion affirmed the judgment on all matters except

Estrada worked as a housekeeping attendant at Kaiser. She claims that, in May 2008, she was exposed to infectious material at work, after which she developed sores on her scalp and in her mouth. By early July 2008, Estrada had developed multiple infections and was admitted to Olive View Medical Center (Olive View) for several days, where she was treated with intravenous antibiotics until the sores began to heal. The following week, after a biopsy was taken at Olive View, a physician concluded Estrada had pemphigus vulgaris, an autoimmune disorder, and prescribed prednisone. A few weeks later, Estrada was hospitalized again and treated for a skin infection. She was discharged after two weeks and told to return to Olive View, where she was instructed to continue taking prednisone for pemphigus vulgaris.

Shortly thereafter, Estrada retained the law firm of Kenneth H. Rowen (Rowen), to pursue a workers' compensation action on her behalf against Kaiser. In connection with Estrada's workers' compensation action Rowen arranged for evaluations by two different doctors, and provided the first doctor with Estrada's records from Olive View. The second doctor also reviewed Olive View's records, as well as records from some Kaiser facilities. Independently, each doctor concluded that Estrada's injuries were not work-related. Estrada discharged Rowen. Estrada continued to experience outbreaks of sores, for which she received treatment at several hospitals. In April 2011, after being admitted to USC Medical Center, Estrada was tested for pemphigus vulgaris. The test was negative.

Meanwhile, Estrada continued to prosecute—and ultimately settled—the workers' compensation action in propria persona (pro. per.).

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the ruling sustaining Kaiser's demurrer without leave to amend. Facts decided in the prior appeal are now law of the case. (*Gore v. Bingaman* (1942) 20 Cal.2d 118, 122–123.)

In January 2012, before settling her workers' compensation action, Estrada filed a complaint and, shortly thereafter, a first amended complaint in the instant action, suing Kaiser, Olive View, Rowen and the two doctors who conducted her medical evaluations in the workers' compensation action. Estrada filed the SAC on May 11, 2012, after demurrers to the first amended complaint were sustained with leave to amend. The SAC purported to allege three causes of action: intentional infliction of emotional distress (against Rowen and Olive View), and claims for civil battery and an undefined "intentional tort (against all defendants)." The gravamen of all the claims was that Kaiser: (1) provided Olive View an "assessment plan" for Estrada, apparently directing Olive View to diagnose her with pemphigus vulgaris and treat her with prednisone; (2) solicited Rowen to produce fraudulent documents relating to Estrada's medical records from Olive View, including letters stating that Olive View provided those records to the doctors who examined Estrada in connection with the workers' compensation action; and (3) solicited both those doctors to produce unauthorized reports stating Estrada's injuries were not work-related. Each defendant demurred to the SAC. Following a hearing on March 5, 2013, the trial court sustained the demurrers filed by Kaiser, Olive View and the two doctors without leave to amend. For reasons not explained in the record, Rowen's demurrer was sustained with leave to amend, and Estrada was given 20 days to amend the SAC. On March 19, 2013, the court dismissed the action against Olive View, the doctors and Kaiser, and Estrada appealed those dismissals.

On March 25, 2013, Estrada filed the operative TAC against the same five defendants. Substantively, as Estrada acknowledges, the allegations of the TAC are "an exact copy" of the SAC's allegations. However, in the first cause of action for IIED of the TAC (still pled against only Rowen and Olive View), Estrada modified the elements of the claim, adding intent and causation, and added

additional allegations of misconduct by Rowen regarding his purported participation in Kaiser's alleged plan to undermine Estrada's workers' compensation claim and deprive her of compensation.[2]

On January 24, 2014, we issued our Opinion affirming the trial court's ruling dismissing the action in its entirety as to Olive View and the doctors. As to Kaiser, we affirmed the dismissal of the second cause of action for civil battery, and the third for "intentional tort." However, we concluded that, notwithstanding the fact that the first cause of action was asserted only against Rowen and Olive View, Estrada had alleged minimally sufficient facts to state a cause of action for IIED against Kaiser. Thus, the trial court erred in sustaining Kaiser's demurrer to that claim without leave to amend.

On April 22, 2014, following this court's issuance of the remittitur, the trial court ordered Kaiser to "file an Answer to the sole remaining cause of action for [IIED] by May 23, 2014." No mention was made regarding Estrada's obligation to amend the SAC to name Kaiser as a defendant to the IIED claim. On May 13, 2014, Kaiser filed an answer to the SAC. On July 2, 2014, Kaiser filed an answer to the TAC, which was virtually identical to its answer to the SAC.[3]

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2 On March 25 or 26, 2013, Estrada filed a two-page unsigned document entitled "Portion Amended to Third Complaint," containing allegations identical to paragraphs 125-127 of the TAC.

3 The only difference is that the Second Affirmative Defense in Kaiser's answer to the TAC contained an additional paragraph stating that the "Second Cause of Action (for Battery) of the [TAC] is the same as the Second Cause of Action of the [SAC], and therefore was not pled in conformity with the laws of the State of California or with the law of this case."

In May 2014, Kaiser propounded written discovery on Estrada, including a set of RFA's. In July 2014, Kaiser filed a motion to have those RFA's deemed admitted.[4] That motion was granted on October 6, 2014.

On October 6, 2014, Kaiser filed a "Motion for Judgment on the Pleadings on the First Cause of Action of [the TAC]."[5] Kaiser argued that, although she had had ample opportunity to do so following issuance of the remittitur, Estrada failed to amend the TAC to name Kaiser as a defendant to the cause of action for IIED. Kaiser acknowledged that Estrada could easily have cured such a pleading defect by filing a simple amendment. However, by virtue of the RFA's now deemed admitted, Estrada had conceded that pivotal allegations underlying her cause of action for IIED were not true. Accordingly, further amendment would be futile.

On October 15, 2014, Estrada filed an opposition to the motion arguing, among other things, that (1) she had two complaints pending (i.e., the SAC, pled only against Kaiser, and the TAC, which applied only to Rowen), (2) the trial court had not yet deemed the RFA's admitted, but had continued the hearing on Kaiser's motion to deem the RFA's admitted to November 12, 2014,[6] and (3) in the meantime, she had responded to the RFA's.

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4 Kaiser also filed (an ultimately successful) motion to strike the cause of action for battery, based on our conclusion in the Opinion that the court properly sustained without leave to amend Kaiser's demurrer to that claim. Estrada did not appeal and does not take issue with that ruling.

5 Kaiser also formally requested that the court take judicial notice of our Opinion and Kaiser's Proposed Order re Deemed Admissions, lodged earlier with the court.

6 This contention was clearly wrong; the order deeming the RFA's admitted was entered on October 6, 2014.

Following a hearing on November 12, 2014, the trial court granted judgment on the pleadings. This appeal followed.

DISCUSSION

1. *Standard of Review*

A defendant's motion for judgment on the pleadings is the equivalent of a general demurrer and governed by the same de novo standard of review. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166; *Brownell v. Los Angeles Unified School Dist*. (1992) 4 Cal.App.4th 787, 793.) Properly pled, material facts are deemed true, supplemented by matters as to which the trial court takes judicial notice, to determine whether the plaintiff has stated a cause of action. (*Angelucci v. Century Supper Club, supra,* 41 Cal.4th at p. 166.)

2. *Kaiser was Entitled to Judgment on the Pleadings*

a. *The TAC Does Not State a Cause of Action for IIED Against Kaiser*

Estrada argues she was neither directed nor required to amend the TAC and that the trial court erred in granting Kaiser's motion for judgment on the pleadings because, in our earlier Opinion, we found she had stated facts sufficient to state a claim for IIED against Kaiser.[7] Estrada misconstrues our Opinion.

In the Opinion, we specifically noted that Estrada had alleged a claim for IIED only against Rowen and Olive View. Nevertheless, we assumed—as we

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[7] Although her appellate briefs are far from clear, Estrada apparently contends that both the SAC and TAC remained pending. Not so. There may be only one operative complaint in an action. An amended complaint supersedes all prior complaints, which cease to have any effect as a pleading. (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130–1131.)

must—that her factual allegations were true and, on that basis, found that Estrada's contention that Kaiser directed Olive View to misdiagnose, and consequently improperly treat, her condition would constitute minimally sufficient facts to state a cause of action for IIED if alleged against Kaiser. Accordingly, the trial court erred when it sustained *without leave to amend* Kaiser's demurrer to the first cause of action. The necessary implication of our conclusion was that Estrada was entitled to an opportunity to amend her pleading to add Kaiser as a party defendant to the IIED claim. Estrada, who had ample time to do so, chose not to act on this opportunity. The TAC still fails to allege a claim for IIED *against Kaiser*.

b. *Estrada's Deemed Admissions Render Further Amendment Futile*

Kaiser concedes here, as it did below that, ordinarily, Estrada could readily cure her pleading defect by amending the TAC to designate Kaiser as a defendant to the IIED claim. But Kaiser insists further amendment is futile by virtue of the court's order deeming Estrada to have admitted that pivotal contentions underlying any IIED claim against Kaiser are untrue.[8] Unless the court has permitted

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[8] Among the 24 factual and/or legal contentions Estrada is deemed to have admitted are admissions that, since May 8, 2008: she neither sought nor received medical or healthcare services from Kaiser (RFA Nos. 1, 2, 17,18); Kaiser never provided instructions on the care or treatment of pemphigus vulgaris to any of Estrada's medical or healthcare providers (No. 8); Kaiser never provided Olive View with an assessment plan concerning Estrada (No. 11); and Kaiser has not, intentionally or otherwise, done anything to cause or which has caused Estrada to suffer emotional distress (Nos. 19, 20).

It is of no moment that some RFA's call for Estrada to admit legal conclusions. (*Burke v. Superior Court* (1969) 71 Cal.2d 276, 282.) The purpose of an RFA is to settle contentions. Only Estrada knows what her contentions are and Kaiser has the right to rely on her admissions regarding them. Even when a request seeks a conclusion of law, the respondent must make the admission if she does not in good faith intend to contest the issue at trial, thereby eliminating a triable issue, or she must identify in detail the reasons why she cannot truthfully either admit or deny the request. (*Ibid*.)

withdrawal or amendment of an admission, any "matter admitted in response to a [RFA] is *conclusively established* against the party making the admission . . . ." (Code Civ. Proc., § 2033.410, subd. (a) (italics added); *Joyce v. Ford Motor Co*. (2011) 198 Cal.App.4th 1478, 1489.) Because the trial court's decision to grant judgment on the pleadings was predicated on Estrada's inability to amend the TAC due to the issues resolved by the order deeming certain critical points admitted, the threshold question is whether the trial court erred in making that order. Discovery orders are reviewed for abuse of discretion. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.)

Estrada maintains that the court erred in deeming the RFA's admitted because (1) there is no evidence to show when she was served with the RFA's, and (2) she provided substantially compliant responses prior to the hearing on the motion to have the RFA's deemed admitted.[9] Neither contention has merit.

First, Estrada is correct that the proof of service accompanying the RFA's refers not to service of that discovery but to Kaiser's May 9, 2014, service of an "Answer to Unverified Complaint." Nevertheless, Estrada does not claim she did

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9 Estrada also argues that, because Kaiser did not formally request that this Court take judicial notice of the trial court's Order re Deemed Admissions, she was free to reserve argument on this issue for her Reply. She is mistaken. Kaiser was not required to request judicial notice of an order that is already part of the record.

Further, in her reply brief, Estrada makes the assertion that the RFA's are material only if Kaiser can show it was served with a conformed copy of the TAC. We need not address this assertion. Even if Estrada's argument had merit, it is well-settled that, absent a showing of good cause—not made here—"'we need not [and do not] consider new issues raised for the first time in a reply brief. . . .' [Citation.]" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 548.)

not receive the RFA's. On the contrary, she concedes that she did, by explicitly asserting she provided timely responses to this discovery.

Estrada's assertion that the trial court erred in ordering the RFA's deemed admitted because she provided substantially compliant responses in advance of the hearing is equally meritless. As discussed above, a "party may request that another litigant 'admit . . . the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties.' (§ 2033.010.)" (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 774 (*St. Mary*).) Unless a party served with RFA's obtains a protective order, she must respond "under oath [and] separately," and in a "complete and straightforward" manner to each RFA within 30 days (Code Civ. Proc., §§ 2033.250, 2033.210, 2033.220, subd. (a).) She must admit as much of each RFA as is true (either as propounded or as reasonably qualified), deny those parts that are not true, and specify those parts, if any, as to which she lacks sufficient information or knowledge to admit or deny. (§ 2033.220, subds. (b)(1)–(3); *St. Mary, supra*, 223 Cal.App.4th at p. 774.)

If timely responses are not provided, a propounding party may seek an order deeming any matter specified in the RFA's admitted. By "judicial fiat," such an order establishes that a nonresponding party has admitted the truth of all matters contained in the RFA's. (*St. Mary, supra*, 223 Cal.App.4th at p. 776.) However, if, prior to the hearing on the "deemed admitted" motion, the responding party provides "substantially compliant responses," the trial court must deny the motion. (*Id*. at p. 776; Code Civ. Proc., § 2033.220, subd. (c).) On the other hand, if the responding party fails to provide such responses before the hearing, the court must "grant the admission motion, usually with fatal consequences for the defaulting party." (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393,

395–396, fn. omitted, overruled on another ground by *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.)

The appellate record is incomplete. It does not contain Kaiser's motion to have the RFA's deemed admitted, which apparently was filed on July 2, 2014, and argued on September 29, 2014. Estrada did attach as an exhibit to her opposition to the motion for judgment on the pleadings, a document entitled "Plaintiff's Admissions to Defendant Kaiser's Request for Admissions" (Admissions), purportedly served on Kaiser on August 5, 2014. Kaiser apparently received those Admissions but found them lacking. It presented the Admissions to the trial court, raising the question of their adequacy in a "supplemental" brief and separate statement filed September 10, 2014, in support of its motion to have the RFA's deemed admitted.

Estrada does not contend the RFA's were improper and did not oppose Kaiser's motion to have them deemed admitted. Nor does anything in the record indicate she attempted to withdraw or amend her Admissions. (See Code Civ. Proc., § 2033.300 [setting forth procedure and criteria for party to withdraw or amend admission].) The court clearly found Estrada's responses inadequate, and granted the motion. A deemed admitted order establishes that a party who has failed to provide any or adequate responses to RFA's has admitted the truth of all matters contained therein. (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 971; Code Civ. Proc., § 2033.410, subd. (a).)

We reject Estrada's contention that simply because she served Admissions before the hearing, the trial court lacked discretion to grant the motion. Estrada's Admissions do not substantially comply with the requirements of Code of Civil Procedure sections 2033.210 or 2033.220. She did not provide the requisite separate, straightforward, complete and sworn responses, admitting, denying or stating her inability to either admit or deny any of 24 RFA's. Estrada's unsworn

Admissions consist of five pages of incoherent narrative statements, none of which responds directly to any RFA or even approaches substantial compliance with sections 2033.210 or 2033.220. The fact that Estrada's Admissions were unsworn is, itself, "tantamount to [providing] no responses at all." (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) The trial court did not abuse its discretion by granting Kaiser's motion to deem admitted Estrada's responses to its RFA's.

c. *Estrada Cannot State a Claim for IIED Under Civil Code Section 56.35*

Estrada maintains she has stated a viable claim for IIED against Kaiser under Civil Code section 56.35. This assertion is premised on her claim that, by obtaining her medical records from Olive View, Kaiser stepped outside its role as her employer because it could obtain those records only by falsely acting as a "health care" provider under Civil Code section 56.10, subdivision (c). Estrada claims that, in that (false) capacity, Kaiser improperly used her medical records and interfered with her treatment by formulating an assessment plan for Olive View that misdiagnosed her injury and improperly treated and worsened her condition.

Estrada's argument fails. Based on her deemed admissions, Estrada has definitively conceded that, since May 2008, Kaiser has not: (1) provided her health care services; (2) provided Olive View or any health care provider an assessment plan or instructions regarding the nature or treatment of her condition; (3) committed any act intended to cause Estrada to suffer emotional distress; or (4) caused Estrada to suffer any emotional distress.

d. *Res Judicata Did Not Bar the Motion for Judgment on the Pleadings*

Estrada contends that Kaiser was precluded by our prior Opinion from seeking judgment on the pleadings. Again, she is mistaken.

Res judicata precludes relitigation of a cause of action that was previously adjudicated in another proceeding between the same parties or parties in privity with them. (*Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 896.) The doctrine applies only if (1) the decision in the prior proceeding is *final and on the merits*; (2) the present proceeding involves the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 974.)

The doctrine of res judicata applies only if the same controversy was directly adjudged in a prior action between the same parties. (Code Civ. Proc., § 1908; *Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 67-68.) This necessarily requires the litigation of an issue (or at least a fair opportunity to litigate) between parties with adversarial interests. The doctrine cannot be used to immunize the outcome of a proceeding if the parties were not adversaries. (*Estate of Charters* (1956) 46 Cal.2d 227, 236.)

The doctrine of res judicata did not bar Kaiser's motion for judgment on the pleadings. The prior appeal was not a different *action*—it involved the same lawsuit which is the subject of this appeal, did not involve the same controversy between the same parties and was not a final judgment on the merits. The first appeal addressed the question whether, if amended, the SAC could allege sufficient facts to state a claim for IIED against Kaiser. Our decision was not a final adjudication on the merits; the case was remanded for additional proceedings. (See *People v. Barragan* (2004) 32 Cal.4th 236, 253; cf. *De Gonia v. Building Material etc. Union* (1957) 155 Cal.App.2d 573, 578 [there is no prohibition against one

court granting a motion for judgment on the pleadings after another has sustained the validity of a complaint by overruling a demurrer].)

This appeal involves the issue whether Kaiser was entitled to judgment on the pleadings due to Estrada's failure to amend the TAC to name Kaiser as a party defendant to the IIED claim, and the more fundamental issue whether such an amendment would be futile in light of Estrada's deemed admissions (which were not part of the record in the first appeal), which have eliminated her ability to plead a viable IIED claim against Kaiser. Kaiser's motion for judgment on the pleadings was not barred under the doctrine of res judicata.[10]

DISPOSITION

The judgment is affirmed. Kaiser shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J. COLLINS, J.

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10 To the extent we are able to ascertain them, Estrada's final contentions—which appear to be a restatement of her claim to have adequately pled a cause of action for IIED against Kaiser—have been addressed above, and resolved against her. We need not repeat that discussion.