Filed 5/1/17 Beuchel v. Superior Court CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARIA BEUCHEL, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CAMERON FLANAGAN et al., Real Parties in Interest.	B268193 (Los Angeles County Super. Ct. No. BC496809)

ORIGINAL PROCEEDINGS in mandate. Elizabeth R. Feffer, Judge. Petition for writ of mandate denied.

Veatch Carlson, Peter H. Crossin for Petitioner.

No appearance for Respondent.

Morris Polich & Purdy, Richard H. Nakamura, Jr. and James H. Demerjian for Real Parties in Interest.

* * * * * *

This case illustrates the wisdom of the Croatian proverb: "Better a bad harvest than a bad neighbor." The next door neighbors in this case have been engaged in a cycle of harassment and litigation for nearly 15 years. The latest bout was mediated to settlement, but one of the neighbors who agreed to the short-form settlement terms refused to sign the finalized longer-form settlement. The other neighbors brought a motion to enforce the short-form settlement agreement and for sanctions. The trial court granted both motions, and the first neighbor appeals. We construe the appeal as a petition for a writ of mandate, and deny the petition, thereby affirming the trial court's grant of other motions.

FACTS AND PROCEDURAL BACKGROUND

I. Factual Background

Maria Beuchel (plaintiff) lives next door to Cameron Flanagan (Flanagan) and Kevin Mullican (Mullican) (defendants). They have been neighbors—and have been feuding—since 2002.

In June 2011, Flanagan allegedly sprayed plaintiff with a garden hose in the face. In September 2011, defendants allegedly went onto plaintiff's property to install barbed wire atop the fence running along the parties' shared property line, placing part of that wire atop the roof of plaintiff's garage. In April and May of 2012, defendants installed surveillance cameras that overlooked plaintiff's backyard.

In April 2012, defendants called the police and made a citizen's arrest of plaintiff after finding her in their backyard damaging their fence. The resulting charges against plaintiff were later dismissed.

In November 2012, plaintiff sought a civil harassment order against defendants based on several alleged incidents dating back to 2006, including the garden hose and barbed wire incidents. Although the trial court initially issued an ex parte temporary restraining order, after an evidentiary hearing the court concluded that plaintiff's claims were "frivolous," dissolved the temporary restraining order, and ordered plaintiff to pay defendants' attorney's fees of $1,500.

II. Procedural Background

A. Complaint and Cross-complaint

In December 2012, plaintiff sued defendants. She amended her complaint in February 2014. In the operative amended complaint, she alleged claims for (1) battery (regarding the June 2011 garden hose incident), (2) trespass (regarding the September 2011 barbed wire incident), (3) invasion of privacy (regarding the installation of surveillance cameras), and (4) malicious prosecution for making the April 2012 citizen's arrest.

Defendants filed a cross-complaint. In the operative amended cross-complaint, defendants sued plaintiff and her roommate for (1) trespass and destruction of property, (2) harassment, (3) intentional infliction of emotional distress, (4) invasion of privacy, (5) intrusion into private affairs, and (6) nuisance. In support of these claims, defendants alleged that plaintiff and/or her roommate vandalized the shared fence, lobbed verbal threats and insults, smoked outside defendants' window in the middle of the night, banged pots and pans at all hours, idled their car too loudly, and trimmed trees without first obtaining consent.

B. Motion for Summary Judgment

Defendants moved for summary judgment on plaintiff's claims. The trial court granted that motion, ruling that (1) plaintiff was collaterally estopped from asserting her battery, trespass, and malicious prosecution claims because they had been previously litigated in the civil harassment litigation, and (2) plaintiff had not shown any triable issues of fact on the invasion of privacy claim (or, for that matter, the trespass or malicious prosecution claims).

C. Mediation and Settlement Agreement

With the trial on defendants' cross-complaint looming, the parties went to mediation. They signed a Stipulation for Settlement that set forth, in shorthand form, the terms of their settlement (the short-form agreement). As pertinent here, those terms included: (1) plaintiff's promise to pay defendants $37,000 "as full and final settlement of the claims raised in [Los Angeles Superior Court] Case No. BC496809," (2) plaintiff's promise to "waive [her] right to appeal," and (3) a "1542 waiver."

Defendants drafted a long-form Settlement Agreement and Release (the long-form agreement) for signature. With respect to the first two terms noted in the short-form agreement, the long-form agreement obligated plaintiff to pay $37,000 and to dismiss her action with prejudice, thereby cutting off her right to appeal. With respect to the third requirement, the long-form agreement set forth: (1) each party's promise to "unconditionally and irrevocably . . . waive [and] release [against the other party] . . . any and all past and present claims, counterclaims, actions, defenses, affirmative defenses, suits, rights, causes of action [and] lawsuits . . . of whatever kind or character . . . whether known or unknown or capable of being known, whether existing

now or to come into existence in the future . . . *arising out of the claims made in the Litigation or Cross-Complaint* . . . ."; and (2) each party's "specific[] waive[r] and relinquish[ment of] all rights and benefits afforded by Section 1542 of the . . . Civil Code, *to the extent of the releases provided above*."

D. Motion to Enforce Settlement Agreement

Plaintiff refused to sign the long-form agreement, asserting that the long-form agreement—like the mediation that preceded it—pertained only to defendants' cross-complaint, such that the only parties who should be required to release future claims were defendants. Plaintiff hinted that she wanted to preserve a possible property line dispute for litigation.

Defendants filed a motion to enforce the short-form agreement under Code of Civil Procedure section 664.6 along with a motion for sanctions under Code of Civil Procedure section 128.5.

The trial court granted both motions. The court found that "the parties entered into a valid and binding settlement," and, more to the point, that the "clear and unambiguous language of the short-form agreement . . . indicates that the Civil Code [section] 1542 waiver was meant to" reach all parties, not just defendants. The court rested its finding on two facts: (1) the fact that the short-form agreement effected a "'full and final settlement of the claims raised in [Los Angeles Superior Court] Case No. BC496809,'" which necessarily included both plaintiff's complaint *and* defendants' cross-complaint; and (2) the fact that plaintiff waived her right to appeal, which negated the inference that the settlement dealt only with the cross-complaint. In light of these findings, the court determined that there was "no bona fide dispute," such that plaintiff's "failure to sign the [long-form

agreement] was as a result of bad faith." The court ordered plaintiff to pay $3,940 in sanctions.

Plaintiff filed a notice of appeal.

DISCUSSION

I. Enforcement of the Short-Form Agreement

A. Justiciability

After granting the motion to enforce the short-form agreement, the trial court did not order the parties to sign the long-form agreement or enter judgment; instead, it issued an order "enforc[ing] the [short-form] agreement with a mutual Civ. Code § 1542 waiver" and imposing sanctions. Neither order is appealable unless and until judgment has been entered. (Code Civ. Proc., § 904.1, subd. (b) [sanctions orders of less than $5,000 not appealable]; *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1246 [order granting motion to enforce settlement under Code of Civil Procedure section 664.6 not appealable].) Although an appellate court has the power to "amend an order to include a judgment if the effect of the order is to finally determine the rights of the parties in the action" (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1183), the trial court here refused to order the parties to sign the long-form agreement because defendants had not specifically sought that relief. The court directed the parties to negotiate a "further stipulation" with all of the pertinent terms. In sum, the court's order enforcing the short-form agreement did not have "the effect of . . . finally determin[ing] the rights of the parties." (*Hines*, at p. 1183.)

We nevertheless have the authority to construe the appeal as a petition for a writ of mandate. (Code Civ. Proc., § 904.1, subd. (b) [so noting, as to sanctions order under $5,000]; *In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1434 [so noting,

generally].) It is in the interests of justice to do so in this case because issues before us now are the chief impediment to the full implementation of the parties' settlement.

B. Merits

If the parties to a case that settles so agree, a trial court may retain jurisdiction over their case "to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc., § 664.6.) Ancillary to this authority, the court may "determine whether the parties reached" a valid and binding settlement and, if they have, "resolve . . . disputed issues" regarding its substance. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905, 911; accord, *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622.) To the extent the trial court resolves disputes regarding the meaning of the settlement, our review is de novo; to the extent it resolves factual disputes, we review for substantial evidence. (*Karpinski v. Smitty's Bar, Inc.* (2016) 246 Cal.App.4th 456, 461.)

Civil Code section 1542 sets forth the default rule for the scope of a general release of claims, providing that it does not reach "claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Parties may agree to forego this default rule and waive *all* of their claims, known or unknown. (E.g., *Perez v. Uline, Inc.* (2007) 157 Cal.App.4th 953, 959.)

The trial court correctly determined that *both* sets of parties, in the short-form agreement, agreed to waive their rights under Civil Code section 1542. Although only the cross-complaint remained to be tried at the time the parties sat down to negotiate, the plain language of the short-form agreement they

fashioned encompasses *both* plaintiff's complaint *and* defendants' cross-complaint. That is because, as the trial court noted, *plaintiff* gave up her right to appeal the summary judgment of her complaint. And, consistent with this waiver, the short-form agreement expressly declared it was a "full and final settlement of the claims raised in [Los Angeles Superior Court] Case No. BC496809" (rather than just the cross-complaint in that "Case"). Because *both* sets of parties to the short-form agreement gave up rights, the "1542 waiver" notation in that agreement necessarily encompassed a release by both sets of parties.

Plaintiff mounts three challenges to this reasoning. First, invoking the language of Civil Code section 1542, she argues that, because defendants are the only remaining "creditors," section 1542—and the waiver of section 1542's protection—only applies to them. This argument just restates plaintiff's position that the short-form agreement reached no more than the cross-complaint; we have rejected that argument.

Second, plaintiff cites her counsel's declaration expressing his (mistaken) belief that the release in the short-form agreement applies only to defendants. This parole evidence is inadmissible to contradict the otherwise plain language of the short-form agreement. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 986-987.)

Lastly, plaintiff argues she never intended to have the short-form agreement release her right to bring a new lawsuit settling an unspecified property line dispute between the parties. The parties go on to debate the merits of whether the mutual release in this case would preclude future litigation of a property line dispute: Plaintiff argues that the short-form agreement's waiver of Civil Code section 1542 reaches only "to the extent of

the releases provided above"; that those releases only reach claims "arising out of the claims made in the Litigation or Cross-Complaint"; and that the parties agree that none of those claims covered any property line dispute. Defendants respond that the waiver reaches property line disputes because the short-form agreement contained the following language, "Property line dispute between the settling parties is not resolved by and through this settlement," which the parties then crossed out, thereby indicating an intent to resolve such disputes. This debate is irrelevant to the issue before us, which is whether the long-form agreement's term that *both* sets of parties waive their rights under Civil Code section 1542 accurately reflects the short-form agreement's reference to a "1542 waiver." It does. Whether that release bars plaintiff from filing a lawsuit challenging her property line is an issue defendants can raise as an affirmative defense in that future lawsuit. (*Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 877, fn. 3.) It is an issue for another day, and in no way affects the narrow question before us now.

II. Sanctions

A trial court may order one party to pay the other's "reasonable expenses, including attorney's fees" if the first party engaged in "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (a).) We review a court's order granting sanctions under section 128.5 for an abuse of discretion. (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 199.)

The trial court did not abuse its discretion in requiring plaintiff to pay the attorney's fees defendants incurred in moving to enforce the short-form agreement. Plaintiff's arguments were

either contradicted by the plain language of the short-form agreement or irrelevant. The trial court had ample grounds to find that plaintiff's refusal to sign the short-form agreement was an effort to create controversy where none existed and a thinly veiled attempt to "cause unnecessary delay" by frivolous means.

DISPOSITION

The petition for a writ of mandate is denied, and the trial court's orders enforcing the short-form agreement and imposing sanctions are affirmed. Defendants are entitled to their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

---

* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.