

APPENDIX

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CITY OF BERKELEY,

Cross-complainant and
Respondent,

v.

RASH B. GHOSH,

Cross-defendant and Appellant.

A149098

(Alameda County
Super. Ct. No. 2002043750)

Plaintiff and appellant Rash B. Ghosh (appellant) appeals from the trial court's order declaring him a vexatious litigant. We affirm.

The underlying litigation "involves a long-running dispute between [appellant and respondent] involving appellant's failure to abate unsafe conditions on his real property." (*Ghosh v. City of Berkeley* (Dec. 31, 2013, A133425) [nonpub. opn.].) A thorough summary of the underlying facts and the torturous course of the dispute in numerous proceedings is unnecessary to resolution of the present appeal.

In January 2016, respondent City of Berkeley (respondent) filed a motion for an order declaring appellant a vexatious litigant under section 391, subdivisions (b)(2) and (b)(3) of the Code of Civil Procedure.¹ Section 391, subdivision (b)(2) defines a "vexatious litigant" as a person who "repeatedly relitigates or attempts to relitigate"

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

claims that have already been “finally determined,”² and section 391, subdivision (b)(3) defines a “vexatious litigant” as a person who “repeatedly files unmeritorious papers.”³ In its January 2016 motion, respondent listed 14 pleadings and letters to the court that it argued involved attempts to relitigate matters that had already been decided. The trial court granted the motion in June, declaring appellant a vexatious litigant, ordering him to post security to proceed with the underlying litigation, and entering a “pre-filing order barring [appellant] from filing any new litigation in the courts of this state in *propria persona* without first obtaining leave” from the court in which the litigation is proposed to be filed.

Because it contains a pre-filing order, the trial court’s order is appealable. (*In re Marriage of Rifkin & Carty*, 234 Cal.App.4th 1339, 1347.) “We review the trial court’s order declaring a party to be a vexatious litigant for substantial evidence. [Citation.] We are required to presume the order declaring a litigant vexatious is correct and imply findings necessary to support that designation.” (*Goodrich v. Sierra Vista Regional Med. Center* (2016) 246 Cal.App.4th 1260, 1265–1266.) On appeal, appellant contends the trial court erred because most of the pleadings and letters listed in respondent’s January 2016 motion preceded September 2015, when the June 2015 judgment in appellant’s lawsuit relating to the court’s authorization of sale of appellant’s property by a receiver became final. However, respondent points out in its brief on appeal that its motion “identified five judgments or determinations that were final as of November 2014, as well as one that became final during the pendency of the motion.” Respondent continues,

² In full, section 391, subdivision (b)(2) identifies as a vexatious litigant a person who, “After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in *propria persona*, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.”

³ In full, section 391, subdivision (b)(3) identifies as a vexatious litigant a person who, “In any litigation while acting in *propria persona*, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.”

"The motions and other papers submitted by Appellant . . . sought to relitigate issues that had been determined in all of those final judgments and determinations."

Appellant failed to file a reply brief addressing respondent's argument that he repeatedly sought to relitigate matters finally determined in the separate prior proceedings. While this is not an admission the appeal lacks merit (*Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1218, fn. 4), we will not endeavor to respond to respondent's arguments on appellant's behalf. (See *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1481.) Appellant has failed to show the trial court erred.⁴

DISPOSITION

The trial court's order is affirmed.

⁴ Because appellant has failed to show the trial court erred in declaring him a vexatious litigant under section 391, subdivision (b)(2), we need not and do not address appellant's contentions as to section 391, subdivision (b)(3).

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A149098)

SUPREME COURT
FILED

AUG 22 2018

Jorge Navarrete Clerk

Deputy

Court of Appeal, First Appellate District, Division Five - No. A149098

S250023

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CITY OF BERKELEY, Cross-complainant and Respondent,

v.

RASH B. GHOSH, Cross-defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice