APPENDIX C

Court of Appeal, Fourth Appellate District, Division Three - No. G055647

S259177

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GREGORY MOORE, Plaintiff and Appellant,

v.

COUNTY OF ORANGE et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GREGORY MOORE, Plaintiff and Appellant, v. COUNTY OF ORANGE et al., Defendants and Respondents.	G055647 (Super. Ct. No. 30-2011-00476941) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Gregory Moore, in pro. per., for Plaintiff and Appellant.

Woodruff, Spradlin & Smart, Daniel K. Spradlin and Roberta A. Kraus for Defendants and Respondents.

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I. INTRODUCTION

Gregory Moore (Moore) sued the County of Orange (County) and several of its social workers for various civil rights violations arising out of the improper detention of his son in a juvenile dependency case. He lost after a long jury trial. He appealed. We affirmed the defense judgment in favor of the County and its social workers, with the typical provision at the end of our opinion that the winning parties were to recover their costs on appeal. The County filed a memorandum of costs for about $9,000. Moore filed a motion to tax costs. It was denied. He later filed a motion for reconsideration of that denial, but included no new facts, circumstances, or law, supporting that motion. The trial court denied his motion for reconsideration. Moore then appealed from the order denying his reconsideration motion. He has not appealed from the original denial of his motion to tax costs. Following our Supreme Court's decision in *Le Francois v. Goel* (2005) 35 Cal.4th 1094 (*Le Francois*), we have no choice but to affirm the order denying his motion for reconsideration.

II. BACKGROUND

In 2011, in a juvenile dependency case, this court reversed a dispositional order which removed the minor J.M from the custody of his father, Moore. (*In re J.M.* (Feb. 25, 2011, G043723) [nonpub. opn.].) That same year, Moore, represented by the same counsel who had prevailed in his juvenile dependency appeal, sued the County and the social workers involved in the removal of his son for violation of his and his son's civil rights. A jury found against him, and he appealed. In March 2017, this court affirmed the defense judgment in favor of the County. Since the County was the respondent and we affirmed the judgment without modification, we determined that the County was entitled to its costs under rule 8.278 of the California Rules of Court.

The remittitur declaring our opinion was final was filed on June 16, 2017. Less than two weeks later, on June 28, the County filed a memorandum of costs on appeal, claiming three specific items: (1) preparation of the original and copies of the

clerk's transcript or appendix, $7,027; (2) printing and copying of briefs, $1,575.12; and (3) transmitting, filing, and serving of record, briefs, and other papers, $292.73. The total was $8,894.85.

Moore responded on July 17, 2017 by filing a motion to tax the costs claimed by the County. Much of his motion was a reargument of the merits of the civil rights action he filed and lost against the County. His motion was studded with references to the County's "oppression," "fraudulent materials" and "lies." He asserted a "huge miscarriage of justice occurred in the Moore v OCSSA trial." He further claimed the County's lawyers had engaged at the trial in deceit and collusion. Specifically, he claimed the County had "deceived the jury into believing it was the Juvenile Judges [*sic*] fault that [J.M.] was detained by OCSSA."[1]

As to the big item claimed by the County – the $7,027 for the clerk's transcript – Moore asserted that he should not have to pay for the County's "capriciously ordering 40 pounds of transcripts for everything" when he had "reviewed two and a half years of trial notes to provide highlights for appellate review and narrowed down the issues to four transcripts which the plaintiff [Moore himself] has already paid for."

As to the other two smaller items, Moore asserted the $1,575 was excessive for brief printing when his own printing and copying expenses had only amounted to $51.13. And regarding the $292.73 in transmission costs, Moore claimed the item reflected "double or even triple" charges because "all service was mail service and filing is exempt." Moore's motion to tax costs contained no formal declaration under oath supporting his arguments.

The County's opposition to Moore's motion contained the revelation that the $7,027 listed for the printing of the clerk's transcript was incorrectly described. It wasn't for the *clerk's* transcript; it was for the *reporter's* transcript. In that regard the

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[1] We must deny Moore's request for judicial notice filed March 4, 2019. At this date we have no power to review the judgment in that earlier proceeding.

County submitted an authenticated copy of a check for $7,000 payable to the court reporter for the transcripts. The County also included a copy of an invoice from a Kansas firm for $1,575.12 for the printing of its briefs, which included charges for scanning and electronic numbering. Finally, the County's lawyers included an in-house record of their mailing charges.

The motion to tax costs was heard August 14, 2017, by a temporary judge. The result was a minute order declaring the County and its social workers were to "recover $8,858.37 in costs, jointly." Since there was no court reporter we cannot explain why there was a reduction of $36.95 from the original total.

On August 24, 2017, Moore filed a motion for reconsideration. This motion was supported by his declaration, in which he once again stressed his assertion that the original trial was a miscarriage of justice. He reiterated his point that County social workers had "lied to the jury" several times and "fabricat[ed] evidence."

On the merits of the cost bill itself, Moore asserted that he had taken "extraordinary measures to narrow down the issues and provide just the transcripts necessary for the appeal per the Appellate Court procedure of designation of records." He then asserted that the County's claim to "the entire enormity of the massive record, even if irrelevant, is wrong."

In its opposition to the motion for reconsideration the County expanded on the reasons for the size of the record. It noted that Moore himself had originally designated *all* the trial transcripts for his appeal. Then he filed an amended designation listing only a few items to be transcribed by the court reporter,[2] but in that amendment he listed as points he wanted to raise on appeal "Abuse of discretion" and "Judicial misconduct." The breadth of these issues, the County argued, required a transcript of the entire trial.

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[2] Specifically, the judge's summary of the case to the jurors, his own testimony on a certain morning session, and his own closing argument.

Moore's reply asserted he should not have to pay for "the reproduction of lies" found in the transcripts. Citing rule 8.153 of the California Rules of Court, he further argued the County's cost was unnecessary because it simply could have e-mailed the transcripts to him.

On October 16, 2017, the same judge who presided over the earlier trial of Moore's civil rights claims, Judge Geoffrey Glass, denied the motion for reconsideration. Again, no reporter was present. On November 8, 2017 Moore filed a notice of appeal. His notice only mentioned the order dated October 16, 2017.

III. DISCUSSION

It is important to first understand what precisely is at issue in this appeal. The notice of appeal limits the issues this court may consider. (See *Conservatorship of Edde* (2009) 173 Cal.App.4th 883, 889 [because notice of appeal was "very limited in scope" and arose only out of a certain conservatorship action, appellate court did not have jurisdiction to review any order from related probate action]; *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 967 [because notice of appeal only mentioned order denying the reconsideration motion and vexatious litigant order, but did not mention underlying judgment, appellate court could not consider matters attacking that judgment].) If an issue is not encompassed by the notice of appeal, we cannot entertain it.

Here, Moore did not file a notice of appeal from the August 14, 2017 order denying his motion to tax costs. He has *only* appealed from the October 16, 2017 order denying his motion to *reconsider* the earlier denial of his motion to tax costs. That means the only matter before us is the October 16, 2017 order.

Motions to reconsider are governed by section 1008 of the Code of Civil Procedure.[3] By its terms, subdivision (b) of section 1008 requires a party seeking reconsideration of a prior motion to show by affidavit, in the time since that prior motion,

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

new facts, circumstances, or law.[4] Subdivision (e) of the statute has what might be called a "we-really-mean-it" clause, expressly saying a court has no jurisdiction to hear a litigant's motion for reconsideration unless that litigant has complied with the statute.[5] A trial court thus does not have the legal authority to grant a reconsideration motion brought by a litigant if the litigant hasn't shown new facts, circumstances, or law.

In *Le Francois, supra,* 35 Cal.4th 1094, our Supreme Court explicated section 1008. The court pointed out (several times) that section 1008 was intended to prevent a litigant from bringing "'the same motion over and over.'" (*Id.* at p. 1100, quoting *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156-1157.) The Legislature intended "'to reduce the number of motions to reconsider and renewals of previous motions heard by judges in this state.'" (*Id.* at p. 1098, quoting Stats. 1992, ch. 460, § 1, p. 1831.)

In the present case, Moore did not comply with section 1008 when he filed his August 24, 2017 motion for reconsideration. His declaration in support contained no new facts, circumstances, or law, justifying reconsideration. His declaration, at best, merely renewed legal *arguments* asserting his point the County had committed fraud in the trial of his civil rights case and therefore should somehow be prevented from collecting its costs. The trial court thus had no authority to grant Moore's motion to reconsider its prior decision not to tax costs.

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[4] Section 1008 subdivision (b) provides: "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order *upon new or different facts, circumstances, or law,* in which case it *shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.* For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion." (Italics added.)

[5] "This section specifies the court's *jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court,* or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section." (Italics added.)

It is true that *Le Francois* articulated this safety value: Even if a litigant has brought a motion for reconsideration without new facts, circumstances or law, a court *on its own motion* can reconsider a prior ruling. (See *Le Francois, supra*, 35 Cal.4th at p. 1097.) However, that safety valve requires the court to first give the parties notice it is reconsidering a prior ruling on its own motion and then afford them "a reasonable opportunity to litigate the question." (*Ibid.*) Nothing of the sort happened here. We have no indication Judge Glass was at all inclined to reconsider on his own motion the earlier denial of Moore's motion to tax costs.

Following *Le Francois*, we cannot wade into the merits of Moore's July 17, 2017 motion to tax costs or his August 24 motion to reconsider. Moore's remedy, if the trial court truly erred in denying his July 17 motion to tax costs, was to appeal from the order embodying *that* denial, which he has not done. But even if we could inquire into the earlier ruling, he would have more than an uphill battle. Arguments of judicial misconduct and abuse of discretion require us to review the entire record. We cannot just rely on one party's "notes." It takes little imagination to understand the problems that would be confronted when the parties' "notes" conflicted. It is essential that we have a definitive, incontrovertible record to decide these cases upon, and the decision that has been made over centuries of practice is that the losing side should pay for this. This is called the American Rule because it's generally the same all over the country.

Appellant has fought long and hard for things he believes in. Commitment to principle is admirable but it is not cost-free.

IV. CONCLUSION

At oral argument in this court, Moore was eloquent in his descriptions, some heartrending, of his claims of abuse against the County for the improper detention

of his son and his ensuing financial difficulties. We are not, as human beings, unsympathetic to those claims.

But we must follow the law, and the law circumscribes the relief we can give him. We have no power to launch, at this late date, an investigation into his claims of abuse, or award him recompense for it. Nor can we undo the lack of a reporter at the hearing of August 14, 2017. We only have authority to deal with a ruling on a single motion to reconsider a denied motion to tax costs, and even on that ruling we are constrained by the case law laid down by the Supreme Court.

We therefore affirm the order of October 16, 2017. Respondents shall recover their costs on this appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GREGORY MOORE, Plaintiff and Appellant, v. COUNTY OF ORANGE et al., Defendants and Respondents.	G055647 (Super. Ct. No. 30-2011-00476941) ORDER DENYING PETITION FOR REHEARING

Appellant's petition for rehearing, filed October 24, 2019, is DENIED. While we are not unsympathetic with the distress he alleges was caused him by respondent County, we must be mindful of the fact appellant had his chance to sue the County and any offending social workers; he was represented by counsel in that action,

and he lost. The time to expose the multitude of lies which appellant asserts the County perpetrated in that trial was during that trial. It is now too late.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.