APPENDIX

APP 01

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APP 02

May 7, 2019 Judgment of Dismissal filed for Northern California Collection Service, Inc.	APP
April 30, 2019 Order Re; Failure to Timely Furnish Security; Proposed Judgment of Dismissal	APP
March 27, 2019 Order After Hearing: Granting the NCCS and McIntyre, et al. Motions to Designate Dr. Pierson a Vexatious Litigant with imposition of requirements for a security bond and pre-filing order.	APP

APP 03

SUPREME COURT

DEC 13 2023

Jorge Navarrete Clerk

DEPUTY

Court of Appeal,
Third Appellate District - No. C089972

S282177

IN THE SUPREME COURT OF CALIFORNIA En Banc

NORTHERN CALIFORNIA COLLECTION SERVICE, INC.,
Plaintiff and Respondent,

v.

RAYMOND H. PIERSON, III, M.D.
Defendant and Appellant

GERALD McINTYRE et al.,
Respondents.

The request for judicial notice is granted.
The petition for review is denied

GUERRERO
CHIEF JUSTICE

APP 04

CALIFORNIA SUPREME COURT

Nov 21 2023

Jorge Navarrete Clerk

DEPUTY

Court of Appeal, Third Appellate District – No. C089972

S282177

IN THE SUPREME COURT OF CALIFORNIA

NORTHERN CALIFORNIA COLLECTION SERVICE, INC.,
Plaintiff and Respondent,

V.

RAYMOND H. PIERSON III,
Defendant and Appellant;

GERALD McINTYRE et al.,
Respondents.

The time for granting or denying review in the above-entitled matter is hereby extended to and including January 8, 2024, or the date upon which review is either granted or denied.

GUERRERO
CHIEF JUSTICE

APP 05

SUPREME COURT OF CALIFORNIA

OCT 11 2023

S282177

The court has granted permissions to file the petition for review in excess of 8,400 words and to annex the exhibits to the petition. The petition was filed on October 10, 2023.

Under the California Rules of the Court, 8,500(f), You must now submit a supplemental proof of service reflecting service on Superior Court of

Amador County, and opposing counsel to respondent, Gerald McIntyre. You will have 5 days from this notice to comply. Failure to do so may result in the court striking your filing.

JORGE E. NAVARRETE
Clerk and Executive Officer
Of the Supreme Court
By. K. Castro, Deputy Clerk
500 Argonaut Lane
Jackson, CA 95642

APP 06

Court of Appeal, Third Appellate District

ColetteM. Bruggman, Clerk
Electronically FILED
On 8/30/2023 by
K. Yang, Deputy Clerk

NOT TO BE PUBLISHED

APP 07

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT (Amador)

NORTHERN CALIFORNIA COLLECTION SERVICE, INC.,

Plaintiff and Respondent,

V

RAYMOND H. PIERSON III

Defendant and Appellant;

GERALD McINTYRE et al.,
Respondents.

Plaintiff Northern California Collection Service, Inc. (NCCS) brought a debt collection action against defendant Raymond H. Pierson, III, M.D., to collect unpaid rent due under a commercial lease agreement for office space. Dr. Pierson, proceeding in propria persona, filed a cross-complaint against NCCS and others, including the owners of the office building, alleging numerous claims (e.g., negligence, breach of contract, fraud, defamation). Dr. Pierson appeals from the judgments of dismissal entered in favor of the cross-defendants after the trial court declared him to be a vexatious litigant within the meaning of Code of Civil Procedure section 391,

subdivision (b)(1),1 ordered him to furnish security to avoid dismissal of his cross-complaint (§ 391.3, subd. (a)), and imposed a prefiling order prohibiting him from filing any new litigation in propria persona without irst obtaining leave of the presiding justice or judge (§ 391.7, subd. (a)). Dr. Pierson argues that the judgments of dismissal, which were entered after he failed to furnish the court-ordered security (§ 391.4), must be reversed because the trial court's vexatious litigant finding is not supported by substantial evidence.

We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the pertinent facts and procedural history. Additional background information relevant to the resolution of this appeal is set forth in the Discussion, post. Prior Federal Litigation Commenced in Florida Dr. Pierson is an orthopedic surgeon. In 1993, he moved to Orlando, Florida. Thereafter, he was granted medical staff privileges and performed surgeries at hospitals that were part of a non-profit private health care network serving central Florida--Orlando Regional Healthcare System (ORHS). Dr. Pierson's privileges included placement on the trauma and emergency call list. In mid-1996, an investigation was initiated after complaints were received regarding Dr. Pierson's emergency room usage from nurses, technicians, and

physicians at ORHS's hospitals. The complaints consisted of concerns that Dr. Pierson (1) took an excessive length of time completing his surgeries, (2) scheduled surgeries at .ORHS

In early 2004, following the investigation and administrative disciplinary proceedings that took more than seven years to complete, the ORHS board found that some of the complaints against Dr. Pierson's were valid and filed an adverse action report with the National Practitioner Data Bank, as required under the Health Care Quality Improvement Act of 1986 (HCQIA) (42 U.S.C. § 11101 et seq.). ORHS told Dr. Pierson that it would restore him to the trauma and emergency call list (from which he had been removed after a preliminary review of the complaints against him) if he was willing to comply with the standard policies and protocols that applied to all orthopedic surgeons on staff at ORHS's hospitals.

Dr. Pierson refused to do so and instead moved to California in mid-2004 and opened a medical practice in Amador County.

Almost four years later, Dr. Pierson commenced a federal action in Florida. In January 2008, represented by counsel, he brought suit in the United States District Court for the Middle District of Florida, against ORHS, numerous physicians, the

United States of America, and various federal and state agencies. The complaint, which arose out of the suspension of Dr. Pierson's trauma and emergency call and consulting privileges at ORHS's hospitals, alleged 22 claims, including breach of contract, intentional and unjustifiable interference with contractual relations, defamation, fraud, civil conspiracy, and multiple claims involving HCQIA.2

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2 Dr. Pierson asserted one claim alleging that ORHS and others violated HCQIA, and several claims seeking an order declaring HCQIA unconstitutional. HCQIA provides immunity from monetary liability for both individuals (e.g., physicians) and health care facilities that participate in reasonably informed, reasonably justified disciplinary decisions by qualified medical peer review bodies. (See Fahlen v. Sutter Central Valley Hospitals (2014) 58 Cal.4th 655, 684-686 [observing that federal courts have generally held that "where the record establishes a sufficient quality-of-care basis for the peer.

In October 2010, the district court entered judgment against Dr. Pierson after it dismissed most of his claims and granted summary judgment on those remaining. Dr. Pierson, represented by counsel, appealed. In January 2012, the Eleventh Circuit Court of Appeals affirmed the judgment. In June 2012, the Eleventh Circuit denied Dr.

Pierson's in propria persona petition for rehearing.3 In January 2013, the United States Supreme Court denied Dr. Pierson's in propria persona petition for writ of certiorari.

Prior Federal Litigation Commenced in California

In late January 2014, Dr. Pierson, proceeding in propria persona, filed a legal malpractice action in the United States District Court, Eastern District of California, against two attorneys who had represented him in the federal litigation in Florida. The claims alleged in this action arose out of the "grossly deficient legal advocacy provided by [the attorneys]in all stages of their representation of Dr. Pierson before the 11th Circuit Appellate Court." As a basis for subject matter jurisdiction, Dr. Pierson alleged diversity of citizenship.

In early February 2014, the California district court sua sponte transferred the action to the United States District Court, Southern District of Florida based on improper venue under 28 U.S.C. section 1406.4 The next day, the Florida district court sua sponte dismissed the action without prejudice due to Dr. Pierson's failure to sufficiently allege subject matter jurisdiction.

In April 2014, the Florida district court struck Dr. Pierson's first amended complaint because the action had not been "reopened following its dismissal." The court review action, the disciplined physician cannot overcome the immunity by showing the peer reviewers acted in bad faith or with hostile motives"].)

3 The petition for rehearing is not in the appellate record. In his opening brief on appeal, Dr. Pierson agrees he filed a petition for rehearing en banc in propria persona. However, the Eleventh Circuit's order denying the petition indicates that he sought both panel and en banc rehearing. It is immaterial to the resolution of this appeal whether he requested one or both forms of relief.

noted the dismissal was without prejudice to Dr. Pierson's "right to refile th[e] action." Less than two weeks later, he refiled the action and it was assigned a new case number.

In May 2014, the California district court denied Dr. Pierson's in propria persona motion to vacate the transfer order. In July 2014, the Ninth Circuit dismissed his in propria persona appeal of the transfer order and the order denying his motion to vacate the transfer order, explaining that it lacked subject matter jurisdiction because the challenged orders were not final or directly appealable. In February 2015, the United States Supreme Court

denied Dr. Pierson's in propria persona petition for a writ of certiorari.

In July 2015, the Florida district court dismissed the "refiled" legal malpractice action. This dismissal occurred after Dr. Pierson informed the district court of his desire to prosecute the complaint he filed in a related action in the same district, which although unclear, was apparently filed in propria persona at some point in 2015.

Present Action

In 2016, Dr. Pierson maintained an orthopedic surgery practice at the Amador Professional Center, an office building owned by Gerald and Betty McIntyre (collectively McIntyres) and managed by Colliers International Real Estate Management Services, Inc. (Colliers International). He leased one of the office suites in the building, located in Jackson, California. On October 10, 2016, the office building was damaged when a woman crashed her car into the area near the "front office operations section" of Dr. Pierson's office. Thereafter, Dr. Pierson claimed that he could no longer evaluate and treat patients at his office due to the "negligent handling" of the repairs. As a

4 28 U.S.C. section 1406, subdivision (a) provides: "The district court of a district in which is filed a

case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." consequence of the "exceptional financial disruption" caused by the "negligent and prolonged repairs," Dr. Pierson stopped paying rent and vacated his office on November 30, 2016.

In May 2017, NCCS filed a debt collection action against Dr. Pierson to collect the unpaid rent due under the terms of his commercial lease agreement. In February 2018, Dr. Pierson, proceeding in propria persona, filed a "response" to the complaint and a cross-complaint against NCCS and others.5 The operative cross-complaint, filed in October 2018, asserted numerous claims against NCCS, the McIntyres, Colliers International, and one other party.6 Among other things, Dr. Pierson alleged that the "negligent demolition and repairs" rendered his office "completely uninhabitable" due to a "toxic combination of dust, debris and other unknown inhalants," and that, due to the excessive amount of time it took to complete the repairs, he suffered financial loss and the temporary closure of his medical practice was "necessary to avoid complete financial insolvency." He further alleged that he and his staff sustained "permanent pulmonary injury" from their exposure to the contaminated office space, and that the "unlawful and fraudulent

lawsuit" brought by NCCS "defamed [his] good name and caused exceptional emotional distress." Dr. Pierson claimed that "legal representatives" from NCCS filed a lawsuit which "advanced their demands on the basis of an invalid and expired lease," and noted that NCCS's complaint failed to inform the trial court about the damage caused by the "motor vehicle accident," which resulted in his office "being completely unacceptable for patient care for an extended period."

Vexatious Litigant Motions Filed in the Present Action

In early December 2018, NCCS moved for an order declaring Dr. Pierson to be a vexatious litigant within the meaning of section 391, subdivision (b)(1),

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5 At all times, Dr. Pierson has proceeded in propria persona in the present action.

6 That party, the Amador Professional Center, was dismissed from this action for lack of service and is not involved in this appeal. Dr. Pierson alleged 14 claims against cross-defendants the McIntyres and Colliers International, including seven negligence claims, and claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud per se and intentional deceit, malicious use of process, abuse of process, defamation, and intentional infliction of emotional distress. He alleged five claims against NCCS, including breach of the implied covenant of good faith and fair dealing, fraud per se and intentional deceit, malicious use of process, abuse of process, defamation, and intentional infliction of emotional distress.

declaring Dr. Pierson to be a vexatious litigant within the meaning of section 391, requiring him to furnish security as a condition of prosecuting his cross-complaint (§ 391.3, subd. (a)), and imposing a prefiling order prohibiting him from filing any new litigation in propria persona without first obtaining leave of the presiding justice or judge (§ 391.7, subd. (a)). NCCS argued that such relief was warranted because Dr. Pierson had filed seven litigations in propria persona in the preceding seven years that were finally determined adversely to him, and that he had no reasonable probability of prevailing in this litigation (i.e., succeeding on any of the claims alleged in his cross-complaint). In support of its motion, NCCS requested the trial court take judicial notice of various court records.

Several weeks later, in late December 2018, the McIntyres and Colliers International moved for similar relief. Like NCCS, they sought an order declaring Dr. Pierson to be a vexatious litigant within the meaning of section 391, subdivision (b)(1), and requiring him to furnish security as a condition of prosecuting his cross-complaint (§ 391.3, subd. (a)).7 Also like NCCS, they argued that such relief was warranted because Dr. Pierson had filed seven litigations in propria persona in the preceding seven years that were finally determined adversely to him,

7 Unlike NCCS, the McIntyres and Colliers International did not move for a prefiling order.

and that he had no reasonable probability of succeeding on any of the claims alleged in his cross-complaint. In support of their motion, the McIntyres and Colliers International requested the trial court take judicial notice of various court records.

Both vexatious litigant motions relied on court records from the two federal cases discussed ante. As set forth more fully post, although there was substantial overlap in the litigations identified by the moving parties to show that Dr. Pierson was a vexatious litigant, there were a few separate litigations offered for the trial court's consideration.

Dr. Pierson filed a joint opposition, arguing that the moving parties had failed to demonstrate that he was a vexatious litigant within the meaning of section 391, subdivision (b)(1). In arguing that he had not commenced, prosecuted, or maintained in propria persona at least five separate litigations that were finally determined adversely to him, he noted that the federal action commenced in Florida was "initiated by attorneys and taken through the late stages by attorneys," and that the related federal legal malpractice action commenced in California (and immediately transferred to Florida) had not been finally determined adversely to him. He did not, however, submit any evidence in support of his position or present reasoned argument with citations to pertinent authority. Nor did he ask the

trial court to take judicial notice of any court records. Instead, without citation to supporting evidence, he provided a general and incomplete description of the procedural history of the federal cases.

Trial Court's Ruling on the Vexatious Litigant Motions

In early March 2019, a hearing was held on the vexatious litigant motions. Dr. Pierson argued, as he did in his joint opposition, that the moving parties had failed to demonstrate he was a vexatious litigant within the meaning of section 391, subdivision (b)(1). In so arguing, he noted that the moving parties had only cited two cases, and reiterated that he was represented by counsel in one of those cases in the trial court and on appeal, and that there was no final adverse determination in the other case. He insisted the moving parties were improperly attempting to rely on "all the little pieces" of the cases to establish his status as a vexatious litigant. At the conclusion of the hearing, the matter was taken under submission.

In late March 2019, the trial court issued a written order granting the vexatious litigant motions, finding that there was "substantial evidence" that Dr. Pierson had "commenced, prosecuted or maintained at least five actions as a self-represented litigant in the past seven years, all of which [were]

finally determined adversely to him (§ 391(b)(1))." In so finding, the court took judicial notice of and relied on the court records submitted by the moving parties. The court, however, did not identify which specific litigations qualified for vexatious litigant purposes. Without elaboration, the court also concluded that the moving parties had shown that there was no reasonable probability that Dr. Pierson would prevail in this litigation, noting that he effectively conceded the issue by failing to address it in his opposition. In addition to declaring Dr. Pierson to be a vexatious litigant, the court granted NCCS's request to enter a prefiling order against him and ordered him to furnish security in the amount of $77,020.32 as to NCCS and $63,723.10 as to the McIntyres and Colliers International. The court warned Dr. Pierson that the failure to furnish the security within 30 days would result in the dismissal of the moving parties from the cross-complaint.

Judgments of Dismissal

Dr. Pierson did not furnish the court-ordered security within 30 days. In early May 2019, the trial court denied Dr. Pierson's ex parte application to extend the time to furnish the security. Shortly thereafter, the court entered judgment of dismissal in favor of NCCS. In a separate order, the court entered judgment of dismissal in favor of the

McIntyres and Colliers International. Both judgments of dismissal were entered on May 7, 2019.

Motion for Reconsideration

In June 2019, after a hearing, the trial court denied Dr. Pierson's motion for reconsideration, in which he argued in part that the evidence submitted by the moving parties was not sufficient to support a vexatious litigant finding under section 391, subdivision (b)(1).

The court found the motion procedurally deficient, as it was untimely and not supported by an affidavit or declaration. The court also rejected the motion on the merits, finding that it failed to set forth any new facts, circumstances, or law that would justify reconsideration.

Notice of Appeal and Extensions of Time to File Appellate Briefs

In July 2019, Dr. Pierson filed a timely notice of appeal, which indicated that he was appealing from the judgment entered on May 7, 2019, and various other orders and judgments. Nearly three years later, after numerous extensions of time were granted, Dr. Pierson filed his opening brief and an appellant's appendix in April 2022.

In his brief, Dr. Pierson stated that he sought

reversal of both judgments of dismissal entered on May 7, 2019. However, the judgment of dismissal entered against the McIntyres and Colliers International was not included in the appellate record.

In May 2022, NCCS filed a respondent's brief. In its brief, NCCS noted that Dr. Pierson could not obtain reversal of the vexatious litigant finding because he failed to appeal from the judgment of dismissal entered in favor of the McIntyres and Colliers International.

Two weeks later, Dr. Pierson filed a motion in this court asserting that he intended to appeal both judgments of dismissal entered on May 7, 2019. He requested that we designate the McIntyres and Colliers International as respondents.

After Dr. Pierson (at our request) submitted a copy of the judgment of dismissal entered in favor of the McIntyres and Colliers International, we issued an order augmenting the record to include that document, directing the clerk of this court to designate the McIntyres and Colliers International as respondents, and ordering those parties to file a respondent's brief.

Following the stipulation for an extension of time, the granting of multiple requests for an extension of time, and the granting of a motion to file a revised

and corrected reply brief, the case was fully briefed in April 2023.

DISCUSSION

Appellate Jurisdiction

As a threshold matter, we reject respondents' contention that the appeal must be dismissed because Dr. Pierson's notice of appeal failed to identify an appealable judgment or order.

A. Applicable Legal Principles

The existence of an appealable order or judgment is a jurisdictional prerequisite to an appeal. (Walker v. Los Angeles County Metropolitan Transportation Authority (2005) 35 Cal.4th 15, 21.) A corollary of this rule is that an appeal from a judgment or order that is not appealable must be dismissed. (Katzenstein v. Chabad of Poway (2015) 237 Cal.App.4th 759, 771; Munoz v. Florentine Gardens (1991) 235 Cal.App.3d 1730, 1732.)

" 'Generally, no order or judgment in a civil action is appealable unless it is embraced within the list of appealable orders provided by statute.' " (Walker v. Los Angeles County Metropolitan Transportation Authority,supra, 35 Cal.4th at p. 19; see § 904.1 [listing appealable judgments and orders].) An order declaring a person to be a vexatious litigant and imposing a prefiling order is appealable. (In re Marriage of Deal (2020) 45 Cal.App.5th 613, 618-619.) Likewise, a judgment of dismissal that follows

from the failure to furnish security in connection with an order declaring a person to be a vexatious litigant is appealable. (Golin v. Allenby (2010) 190 Cal.App.4th 616, 635 (Golin).)

"The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2); Luz v. Lopes (1960) 55 Cal.2d 54, 59.) A notice of appeal may be deemed sufficient if it is "reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (Luz, at p. 59; see Red Mountain, LLC v. Fallbrook Public Utility Dist. (2006) 143 Cal.App.4th 333, 344 [a 12 notice of appeal "may be deemed sufficient if it has not misled or prejudiced the respondent"].)

B. Analysis

Dr. Pierson's notice of appeal stated that he was appealing from the judgment entered on May 7, 2019. However, he checked four boxes on the notice of appeal form, which indicated that he was also appealing from the following: (1) a judgment after an order granting a summary judgment motion; (2) an order after judgment under section 904.1, subdivision (a)(2); (3) and order or judgment under section 904.1, subdivision (a)(3)-(13); and (4) an order granting or denying a special motion to strike

under section 425.16 (i.e., an anti-SLAPP motion) Although Dr. Pierson checked several boxes on the notice of appeal form that do not apply to his case, this is not fatal to is appeal. The notice of appeal expressly references the judgment entered on May 7, 2019. The only documents in the record filed on that date were the judgment of dismissal in favor of NCCS, and the judgment of dismissal in favor of the McIntyres and Colliers International. And the other orders and judgments referenced in the notice of appeal are plainly not at issue in this case (e.g., judgment after an order granting summary judgment) or are not separately However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order"].) except for the order declaring Dr. Pierson to be a vexatious litigant and imposing a prefiling order. (In re Marriage of

8 And the other orders and judgments referenced in the notice of appeal are plainly not at issue in this case (e.g., judgment after an order granting summary judgment) or are not separately appealable.

9 The record also includes a proposed order granting judgment of dismissal in favor of the McIntyres and Colliers International. However, that document, which is dated May 7, 2019, does not include a file stamp by the clerk indicating that it was filed with the trial court.

10 Section 904.1, subdivision (a)(2) authorizes an appeal from an order after judgment. Here, the only postjudgment order in the record is the trial court's denial of Dr. Pierson's motion for reconsideration of the vexatious litigant finding, which is not a separately appealable order. (Austin v. Los Angeles Unified School Dist. (2016) 244 Cal.App.4th 918, 927, fn. 6; see § 1008, subd. (g) ["An order denying a motion for reconsideration . . . is not separately appealable.

order. (In re Marriage of Deal, supra, 45 Cal.App.5th at pp. 618-619 [while an order declaring a person to be a vexatious litigant is not itself appealable, such an order may be reviewed in conjunction with a prefiling order, which is an injunction appealable under section 904.1, subdivision (a)(6)].) On this record, we conclude it was "reasonably clear" that Dr. Pierson was attempting to appeal both judgments of dismissal entered on May 7, 2019, and the order encompassed within those judgments--i.e., the order declaring Dr. Pierson to be a vexatious litigant, requiring him to furnish security, and imposing a prefiling order. We further conclude that, despite the deficiencies of the notice of appeal, the respondents were not misled or prejudiced by it. Indeed, respondents make no attempt to show prejudice. And, as pointed out by NCCS, Dr. Pierson could not obtain reversal of the vexatious litigant finding without challenging both judgments of dismissal. Under the circumstances presented, we liberally construe the notice of appeal and deem it sufficient.

II. *Vexatious Litigant Finding*

Next, we consider the propriety of the trial court's vexatious

litigant finding. For the reasons we shall explain, we agree

with Dr. Pierson that there is insufficient evidence to support the trial court's determination that he

was a vexatious litigant within the meaning of section 391, subdivision (b)(1). The evidence submitted in support of the vexatious litigant motions does not establish that Dr. Pierson had commenced, prosecuted, or maintained in propria persona at least five distinct litigations in the preceding seven years that were finally determined adversely to him.

We decline to dismiss the appeal, as urged by the McIntyres and Colliers International, based on Dr. Pierson's failure to timely "procure an adequate record on appeal" and seek to designate them as respondents. This argument is predicated on the record omission of the judgment of dismissal entered in favor of the McIntyres and Colliers International. As discussed ante, we issued an order augmenting the record to include that document. Further, the McIntyres and Colliers International have not developed a cogent legal argument persuading us that dismissal of the appeal is warranted on the basis of an inadequate record.

A. Applicable Substantive Law and Standard of Review

The purpose of the vexatious litigant statutory scheme
is to curb the misuse of the court system by the persistent and obsessive litigant who repeatedly files groundless actions and whose conduct causes serious financial

results to the unfortunate objects of his or her attacks
and not only places an unreasonable burden on the courts but also prejudices other parties waiting their turn before the courts. (Shalant v. Girardi (2011) 51 Cal.4th 1164, 1169 (Shalant);
Garcia v. Lacey (2014) 231 Cal.App.4th 402, 406 (Garcia);
In re Kinney (2011) 201 Cal.App.4th 951, 957-958.) The
statutory scheme "provides a 'means of moderating a vexatious litigant's tendency to engage in meritless litigation.' " (Garcia, at p. 406.)

To be declared a vexatious litigant, a party must come within one of the four definitions set forth in section 391, subdivision (b). As relevant here, section 391, subdivision (b)(1) defines a vexatious litigant as a person who "[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have
been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." The seven-year period is calculated based on the filing date of the vexatious litigant motion. (Stolz v. Bank of America (1993) 15 Cal.App.4th 217, 224; Garcia, supra, 231 Cal.App.4th at p. 406, fn. 4.) A litigation qualifies as

being within the seven-year period so long as it was filed or maintained during that period. (Stolz, at p. 225, Garcia, at p. 406, fn. 4.) Section 391 broadly defines " '[l]litigation' " as meaning "any civil action or proceeding, commenced, maintained or pending in any state or federal court." (§ 391, subd. (a).) "A litigation includes an appeal or civil writ proceeding filed in an appellate court." (Garcia, supra, 231 Cal.App.4th at p. 406.) However, a "litigation" does not include "every motion or other procedural step taken during an action or special proceeding." (Shalant, supra, 51 Cal.4th at pp. 1173-1174 [explaining that a person cannot be declared a vexatious litigant under section 391, subdivision (b)(1) for losing five motions in the same lawsuit during a seven-year period]; see Garcia, supra, 231 Cal.App.4th at p. 412, fn. 10 ["In the framework of the vexatious litigant law, a particular litigation is distinguishable from the various applications, motions, pleadings or other procedural steps that may be filed or taken within the context of that litigation."].)

"A litigation is finally determined adversely to a plaintiff if he does not win the action or proceeding he began, including cases that are voluntarily dismissed by a plaintiff." (Garcia, supra, 231 Cal.App.4th at p. 406.) "A particular litigation is finally determined when avenues for direct review (appeal) have been exhausted or the time for appeal has expired." (Id. at p. 407, fn. 5.)

Qualifying litigations for purposes of the vexatious Litigant law include separate appeals and writ petitions from multiple orders within the same case that are finally determined adversely to the person. (In re Marriage of Falcone & Fyke (2012) 203

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11 The vexatious litigant statutes do not define the term "special proceeding." " 'The Code of Civil Procedure classifies the remedies that may be obtained in the courts.' "

(People v. Board of Parole Hearings (2022) 83 Cal.App.5th 432, 445.) " 'Judicial remedies are divided into 'actions' and 'special proceedings.' " (Ibid.) " 'An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.' " (Ibid.) " 'Every other remedy is a special proceeding.' [Citation.] '[A] special proceeding is confined to the type of case which was not, under the common law or equity practice, either an action at law or a suit in equity.' "

(Id. at p. 446.) "Writs of mandate and prohibition are denominated special

proceedings of a civil nature." (Ibid.) Other special proceedings include punishment of contempt, contesting elections, arbitrations, enforcement of liens, and probate proceedings. (See § 23, Code Commission Notes [listing special proceedings].

Cal.App.4th 964, 1005-1007 [wife declared vexatious litigant under section 391, subdivision (b)(1) based on unsuccessful writ petitions and appeals taken from various orders in marital dissolution action].) However, not every denial of a writ petition qualifies as a litigation for purposes of the vexatious litigant law. An appellate court's summary denial of a writ petition on a pretrial issue that could also be reviewed on appeal from the judgment ultimately entered in the action does not constitute a litigation that has been finally determined adversely to the person within the meaning of section 391, subdivision (b)(1). (Fink v. Shemtov (2010) 180 Cal.App.4th 1160, 1172 [explaining that, in these situations, the court does not take jurisdiction over the case and does not give the legal issue full plenary review].) By contrast, an appellate court's summary denial of a writ petition constituting the exclusive means of obtaining appellate review is properly considered a litigation that has been finally determined adversely to the person for purposes of qualifying for vexatious litigant status under section 391, subdivision (b)(1). (Fink, at p. 1172 [explaining that, in these situations, " 'an appellate court must judge the petition on its procedural and substantive merits, and a summary denial of the petition is necessarily on the merits' "].) "The [vexatious litigant] statutory scheme provides two sets of remedies. First, in pending litigation, 'the defendant may move for an order requiring the plaintiff to

furnish security on the ground the plaintiff is a vexatious litigant and has no reasonable probability of prevailing against the moving defendant.' Citations.] If the court finds in the defendant's favor on these points, it orders the plaintiff to furnish security in an amount fixed by the court. [Citation.] Failure to provide the security is grounds for dismissal." (In re Marriage of Rifkin & Carty (2015) 234 Cal.App.4th 1339, 1345.) The second remedy " ' " 'operates beyond the pending case' and authorizes a court to enter a 'prefiling order' that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge." ' " (Ibid.) "The trial court exercises its discretion in determining whether a person is a vexatious litigant. Review of the order is accordingly limited and the Court of Appeal will uphold the ruling if it is supported by substantial evidence. Because the trial court is best suited to receive evidence and hold hearings on the question of a party's vexatiousness, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment. [Citations.] Of course, we can only imply such findings when there is evidence to support them. When there is insufficient evidence in support of the designation, reversal is required." (Golin, supra, 190 Cal.App.4th at p. 636.)

To the extent we must determine the proper

interpretation of a statutory provision, we do so independently under a de novo standard of review. (Garcia, supra, 231 Cal.App.4th at p. 408; Golin, supra, 190 Cal.App.4th at p. 636.) "[T]he objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.)

B. Additional Background

As previously indicated, in support of their respective vexatious litigant motions, the respondents submitted various court records they claimed showed that Dr. Pierson had commenced, prosecuted, or maintained in propria persona at least five litigations in the preceding seven years that were finally determined adversely to him. Each of the litigations relied on by the respondents arose out of the federal cases described ante.

NCCS argued the following seven litigations were finally determined adversely to Dr. Pierson within the meaning of section 391, subdivision (b)(1): (1) the Eleventh Circuit's decision affirming the judgment entered against Dr. Pierson in the federal action commenced in the Middle District of Florida; (2) the

Eleventh Circuit's order denying Dr. Pierson's petition for rehearing; (3) the United States Supreme Court's order denying Dr. Pierson's petition for writ of certiorari regarding the Eleventh Circuit's decision(4) the California district court's order denying Dr. Pierson's motion to vacate the order transferring the legal malpractice action to the Southern District of Florida; (5) the Ninth Circuit's order dismissing Dr. Pierson's appeal of the transfer order and the order denying his motion to vacate the transfer order; (6) the United States Supreme Court's order denying Dr. Pierson's petition for writ of certiorari regarding the transfer order; and (7) the Florida district court's (Southern District) July 2015 order dismissing the "refiled" legal malpractice action.

The McIntyres and Colliers International relied on the same litigations as NCCS except three--the Eleventh Circuit's decision affirming the judgment entered against Dr. Pierson in the federal action commenced in the Middle District of Florida, the California district court's order denying Dr. Pierson's motion to vacate the transfer order, and the Florida district court's (Southern District) July 2015 order dismissing the "refiled" legal malpractice action. Instead of these three litigations, they relied on the transfer order issued by the California district court, a postappeal judgment entered by the Florida district court (Middle District), which

encompassed an order requiring Dr. Pierson to pay costs and/or attorney fees to certain defendants in the federal action commenced in Florida, and the Florida district court's (Southern District) April 2014 order striking the first amended complaint in the legal malpractice action.

Collectively, the respondents identified 10 specific litigations for the trial court's consideration in deciding whether Dr. Pierson was a vexatious litigant within the meaning of section 391, subdivision (b)(1). However, in passing, NCCS's moving and reply papers suggested that there were five post appeal judgments entered by the Florida district court (Middle District) against Dr. Pierson that also constituted qualifying litigations under the vexatious litigant law, including the postappeal judgment relied on by the McIntyres and Colliers International. These additional judgments encompassed the order(s) awarding costs and/or attorney fees to various defendants after the Eleventh Circuit issued its decision affirming the judgment against Dr. Pierson. Thus, in total, there were 14 litigations offered for the trial court's consideration.

Before addressing the propriety of the trial court's vexatious litigant finding, we briefly pause to note that our review of this issue is significantly hampered by the inadequate legal analysis offered

by the parties in their briefing in the trial court and on appeal, the failure of the parties to develop an adequate record in the trial court with respect to the procedural history of the federal cases relied on to support the vexatious litigant motions, 12 and the trial court's failure to identify the specific litigations that qualified for vexatious litigant purposes and explain why they so qualified.

C. *Analysis*

1. Federal Action Commenced in Florida

We begin our analysis with the federal action commenced in the Middle District of Florida in 2008. As an initial matter, we observe that the judicially noticed court records disclose that, as to the merits, judgment was entered in the district court against Dr. Pierson in 2010, well beyond the applicable seven-year period under section 391, subdivision (b)(1).13 The court records also disclose that Dr. Pierson was represented by counsel during the trial court proceedings and on appeal. And nothing in the record establishes that Dr. Pierson commenced, prosecuted, or maintained this action in propria persona at any time before the Eleventh Circuit issued its decision affirming the judgment entered Without citation to evidence in the record, Dr. Pierson's opening brief on appeal, like his joint opposition in the trial court, identifies and describes

various proceedings (e.g., appeals filed with the leventh Circuit) that purportedly occurred in the legal malpractice action commenced in California and transferred to Florida. But he acknowledges there is no evidence in the record to substantiate his representations.

13 We recognize that respondents did not argue in the trial court that the judgment entered by the Florida district court against Dr. Pierson constituted a qualifying litigation for purposes of section 391, subdivision (b)(1). We provide this background information for context against Dr. Pierson.14 Thus, neither the judgment entered by the district court in 2010 against Dr. Pierson nor the decision issued by the Eleventh Circuit in January 2012 affirming that judgment constitute a qualifying l litigation under section 391, subdivision (b)(1).

Likewise, we conclude that none of the five separate judgments entered against Dr. Pierson after the Eleventh Circuit issued its decision constitute a qualifying litigation under section 391, subdivision (b)(1). Each of these postappeal judgments, which were issued by the Florida district court in April, May, July, and October 2012, encompassed an order granting a motion for costs and/or attorney fees. On appeal, respondents do not point to anything in the record showing that Dr. Pierson was acting in propria persona during these proceedings. And even if we were to assume that he was acting in such a

capacity, our Supreme Court has held that a "litigation" under section 391, subdivision (b)(1) does not include "every motion or other procedural step taken during an action or special proceeding." (Shalant, supra, 51 Cal.4th at p. 1173.)

In Shalant, the high court explained that, reading the vexatious litigant statutes as a collective whole, the term "litigation" in section 391, subdivision (a) cannot be construed to include every motion or other procedural step taken during an action or special proceeding because applying such a definition throughout the vexatious litigant statutes would result in several provisions taking on "absurd, unworkable, or clearly unintended. 14 The McIntyres and Colliers International speculate that the trial court could have reasonably concluded that Dr. Pierson had pursued his appeal with the Eleventh Circuit as a self-represented litigant.

---

15 The Shalant court rejected as "unworkable" the argument that, because "litigation" is defined, for purposes of the vexatious litigant statutes, as "any civil action or proceeding" (§ 391, subd. (a)) and the term "proceeding" can, in some circumstances, refer to a procedural step that is part of a larger action, a vexatious litigant who is barred by a prefiling order from "filing any new litigation" in propria persona (§ 391.7, subd. (a)), and who becomes self-represented while an action is pending, cannot take any further procedural steps in the action without first obtaining permission from the presiding judge. (Shalant, supra, 51 Cal.4th at pp. 1173-1175.

In support of this theory, they argue that the trial court could have reached this conclusion by finding that Dr. Pierson had "ghostwritten" certain papers and merely affixed an Finally, while Dr. Pierson concedes that he filed, in propria persona, the petition for rehearing denied by the Eleventh Circuit, respondents have not cited, and we are not aware of, any authority holding that the denial of such a petition qualifies as a distinct litigation that was finally determined adversely to Dr. Pierson within the meaning of section 391, subdivision (b)(1). In our view, it does not constitute a qualifying litigation. Although the term "litigation" is broadly defined under the vexatious litigant law, a petition for rehearing is not a civil action or a special proceeding within the meaning of the vexatious litigant law. (See § 23, Code Commission Notes [listing special proceedings].) Nor is it an appeal or writ proceeding filed in an appellate court. (See Garcia, supra, 231 Cal.App.4th at p. 406 [a litigation for purposes of the vexatious litigant law includes an appeal or civil writ proceeding filed in an appellate court].) And, as we have explained, the term "litigation" does not include every procedural step taken during an action. (Shalant, supra, 51 Cal.4th at pp. 1173-1174.)

We need not and do not decide whether, under the circumstances of this case, the United States

Supreme Court's denial of Dr. Pierson's petition for writ of certiorari constitutes a distinct qualifying litigation within the meaning of section 391, subdivision (b)(1). Even if we were to assume that it does, respondents failed to identify four additional qualifying litigations, as we next explain.

2. Federal Action Commenced in California

Turning to the related federal legal malpractice action commenced in the Eastern District of California in 2014, we initially observe that respondents have not pointed to any authority supporting the conclusion that the California district court's sua sponte order transferring the matter to the Southern District of Florida or any of the subsequent orders related to the transfer order qualify as a distinct litigation that was finally determined adversely to Dr. Pierson within the meaning of section 391, subdivision (b)(1). For the reasons that follow, we conclude that neither the transfer order nor the denial of the motion to vacate that order is properly considered a qualifying litigation for purposes of the vexatious litigant law. We reach the same conclusion regarding the Ninth Circuit's dismissal of Dr. Pierson's appeal challenging those orders and the United States Supreme Court's denial of Dr. Pierson's petition for writ of certiorari.

A transfer order is an interlocutory order that is not appealable prior to a final judgment, although a party may seek review of a transfer order by way of a writ of mandamus. Pacific Car & Foundry Co. v. Pence (9th Cir. 1968) 403 F.2d 949, 951- 952; see NBS Imaging Systems, Inc. v. United States District Court for the Eastern District of California (9th Cir. 1998) 841 F.2d 297, 298 ["[w]e have long held that in extraordinary circumstances involving a grave miscarriage of justice, we have power via mandamus to review an order transferring a case to a district court in another circuit"].) Under California law, the summary denial of a writ petition that is not the exclusive means of obtaining appellate review of a pretrial ruling does not qualify as a litigation finally determined adversely to a party within the meaning of section 391, subdivision (b)(1). (See Fink v. Shemtov, supra, 180 Cal.App.4th at pp. 1172-1173 [distinguishing writ petitions challenging pretrial orders that could also be reviewed on appeal from the judgment ultimately entered in the action from situations in which a writ petition was the only authorized mode of appellate review].) Here, although it could have, the Ninth Circuit did not treat Dr. Pierson's notice of appeal as a mandamus petition and review the merits of the transfer order. (See Special Investments, Inc. v. Aero Air, Inc. (9th Cir. 2004) 360 F.3d 989, 993 [" 'a notice of appeal from an otherwise nonappealable order can be considered as a mandamus petition' "].) Instead, the

Ninth Circuit dismissed Dr. Pierson's appeal for lack of subject matter jurisdiction because the transfer order and the order denying the motion to vacate that order were not final or directly appealable, citing Nascimento v. Dummer (9th Cir. 2007) 508 F.3d 905, 908 [transfer order not directly appealable]; Branson v. City of Los Angeles (9th Cir. 1990) 912 F.2d 334, 336 [denial of reconsideration of non-appealable order is itself not appealable]; In re San Vincente Med. Partners, Ltd. (9th Cir. 1989) 865 F.2d 1128, 1131 [magistrate judge order not final or appealable].16 Thereafter, the United States Supreme Court denied Dr. Pierson's petition for writ of certiorari, which does not constitute an expression of an opinion on the merits of the transfer order. (Teague v. Lane (1989) 489 U.S. 288, 296 [" 'denial of a writ of certiorari imports no expression of opinion upon the merits of the case' "].) In short, neither the transfer order nor any of the subsequent orders related to that order qualify as a distinct litigation within the meaning of section 391, subdivision (b)(1). None of the orders constitute a "final" adverse determination of the transfer issue. We need not and do not decide whether either of the orders issued by the Florida district court (Southern District) dismissing the legal malpractice action constitute a distinct qualifying litigation within the meaning of section 391, subdivision (b)(1). Even if we were to assume that they do, respondents failed to identify five qualifying litigations.

3. Conclusion

We conclude that substantial evidence does not support the trial court's determination that "in the immediately preceding seven-year period" Dr. Pierson "commenced, prosecuted, or maintained in propria persona at least five litigations . . . finally determined adversely" to him. (§ 391, subd. (b)(1).) Therefore, the court committed reversible error when it determined that he was a vexatious litigant under that provision, and also erred when it ordered further relief under the vexatious litigant statutes--i.e., the prefiling order (§ 391.7, subd. (a)), and the requirement that Dr. Pierson furnish security to avoid dismissal (§ 391.3, subd. (a))— since that relief was based on his classification as a vexatious litigant. Finally, because the judgments of dismissal were premised upon Dr. Pierson's failure to furnish the court-ordered security in connection with the vexatious litigant determination (§ 391.4), they too must be reversed.

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16. Transfer orders are reviewable only in the circuit of the transferor district court. (Posnanski v. Gibney (9th Cir. 2005) 421 F.3d 977, 980.) However, a party is not without any recourse when an action is transferred to a district court in another circuit. Under those circumstances, the party "may move in the transferee court to retransfer the action to the transferor court and the denial of that motion is reviewable in the transferee circuit." (Id. at pp. 980-981 [noting that "[s]uch review may even be had via a petition for a writ of mandamus in certain circumstances"].) The record does not disclose whether Dr. Pierson sought such relief in the Florida court.

DISPOSITION

The judgments of dismissal, which encompass the order declaring Dr. Pierson to be a vexatious litigant (§ 391, subd. (b)(1)), requiring him to furnish security to avoid dismissal of his cross-complaint (§ 391.3, subd. (a)), and imposing a prefiling order (§ 391.7, subd. (a)), are reversed. Dr. Pierson shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

Duarte, J.

We concur:
Mauro, Acting P. J.
McAdam, J.

17 We reject Dr. Pierson's undeveloped argument that "severe" sanctions should be imposed against respondents for filing vexatious litigant motions.

*Judge of the Yolo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APP 0040

IN THE
Court of Appeal of the United States IN
AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST
Re: Northern California Collection Service, Inc. v. Pierson III

C089972 Amador County No. 17CVC10112

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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Honorable Renee C. Day
Judge of the Amador Superior Court
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MAY 7 2019

Superior Court

By:A. Jones Williams
PO Box 119
Clerk of the Superior Court
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Attorneys for Cross-Defendants
GERALD MCINTYRE, BETTY MCINTYRE, COLLIERS INTERNATIONAL REAL ESTATE MANAGEMENT SERVICES, INC.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF AMADOR
UNLIMITED JURISDICTION

NORTH ERN CALIFO RNIA COLLECTION SERVICES. INC..

Plaintiff, v.

RAYMOND H. PIERSON III as an Individual and dba RAYMOND PIERSON III MD and DOES 1 through 10

Defendants.

No. 17-CV-10112

CROSS DEFENDANTS GERALD MCINTYRE, BETTY MCINTYRE, AND COLLECTIONS INTERNATIONAL REAL ESTATE MANAGEMENT SERVICES, INC'S ~~[PROPOSED]~~ JUDGEMENTOF DISMISSAL OF CROSS-COMPLAINT

Complaint Filed May 19, 2017

APP 0035

RAYMOND H. PIERSON III as an Individual and dba RAYMOND PIERSON, III M.D. and DOES 1 through 10

Cross-complainant,

NORTHERN CALIFORNIA COLLECTION

SERVICES. INC.; AMADOR PROFESSIONAL CENTER; COLLIERS INTERNATIONAL REAL ESTATE MANAGEMENT SERVICES, INC,; GERALD AND BETTY MCINTYRE

Cross- defendants

On May 27, 2019, the Court entered an Order granting cross-defendants GERALD MCINTYRE, BETTY MCINTYRE and COLLIERS REAL ESTATE MANAGEMENT SERVICES, INC ("Cross-Defendants") to declare cross-complainant RAYMOND H. PIERSON ("Cross-Complainant") a vexatious litigant. As part of the Court's Order Cross-Complainant was required to post security as to Cross-Defendants in the amount of $63,723.10 within thirty (30) days of the date of service of its March 27, 2019 Order, which was served by the Court on March 28, 2019. The

Order further
provided that if Cross-Complainant failed to post security
within thirty (30) days of the service of the Order,
the Cross-Complaint would be dismissed as to the moving
Cross-Defendants.

Cross-Complainant was required to furnish security
by Monday April 29, 2019. Cross-Complainant failed
to furnish security as required by the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Cross-Complaint as to cross-defendants GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES INC, is dismissed with prejudice;

2. Judgement is entered in favor of cross-defendants GERALD MCINTYRE, BETTY MCINTYRE,

and COLLIERS REAL ESTATE MANAGEMENT SERVICES INC, against cross-complainant RAYMOND H. PIERSON; and

3. Cross-complainant RAYMOND H. PIERSON shall take and recover nothing in this action from cross-defendants GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES INC.

DATED: 5/7/19 RENEE C. DAY

JUDGE OF THE SUPERIOR COURT

APP 0043

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Attorneys for Plaintiff & Cross Defendant Northern California Collections Service, INC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF AMADOR –
UNLIMITED CIVIL

Northern California Collections Service Inc

Case No, 17-CVC-10112

Plaintiff,

Judgement of Dismissal

V.

Complaint filed: 5/19/17

2d FACC filed:10/19/18

Raymond H. Pierson III

Defendant

and related cross-action

Having on March 27, 2019, granted cross-defendant Northern California Collection Service, Inc's motion to declare cross-complaint Raymond H. Pierson a vexatious litigant, and having ordered Pierson to furnish security no later than April 29, 2019 and said security having not been furnished as ordered, pursuant to Code of Civil Procedure section 391.4

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Judgement of Dismissal is entered for cross-defendant Northern California Collection Service, Inc. and against cross-complaint Raymond H. Pierson III, as an individual and dba Raymond H. Pierson, III, M.D.

Cross-defendant Northern California Collection Service, INC's attorney fees and costs, if any, by law.

Dated: 5/7/19
RENEE C. DAY
JUDGE OF THE SUPERIOR COURT

AMADOR COUNTY SUPERIOR COURT
FILED
500 ARGONAUT LANE
JACKSON, CA 95642
APRIL 30, 2019
(209) 257-2603

CLERK OF THE SUPERIOR COURT

BY: A. Jones Williams

NORTHERN CALIFORNIA
COLLECTION SERVICE, INC.,
Plaintiff

vs.

RAYMOND H PIERSON,
Defendant.
AND RELATED CROSS-ACTION.

ORDER RE: FAILURE TO TIMELY FURNISH SECURITY; PROPOSED JUDGMENT OF DISMISSAL; VACATING PENDING CIVIL DISCOVERY MOTIONS

CASE NUMBER: 17 CV 10112

On March 27, 2019, the court granted the

motions of cross-defendant NORTHERN CALIFORNIA COLLECTION SERVICE, INC. (or NCCS) and cross-defendants GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES, INC. to declare cross-complainant RAYMOND H PIERSON a vexatious litigant. The court ordered PIERSON to post security within thirty (30) days of the date of service of the court's order. The order also stated that if PIERSON failed to post security as ordered within thirty (30) days of service of the order, the cross-complaint would be dismissed as to the moving cross-defendants. (CCP § 391.4.)

The order was served by the court on

March 28, 2019.

Proof of service by the Clerk of the Court is filed. The last day on which to furnish security was April 27, 2019.

As this was a Saturday, security would have been accepted on or before Monday, April 29, 2019. Security has not been furnished as ordered. The court orders the moving parties for whose benefit the undertaking was required to be furnished, and was not, to prepare and submit proposed judgments of dismissal.

The court further orders the two civil discovery motions calendared for 10:00 a.m. on May 10, 2019 vacated. IT IS SO ORDERED.

DATED: 4/30/19

RENÉE C. DAY
JUDGE OF THE SUPERIOR COURT

FILED
AMADOR SUPERIOR COURT
MAR 27 2019

CLERK OF
THE SUPERIOR COURT

APP 04
BY: A. Jones Williams

AMADOR COUNTY SUPERIOR COURT
500 ARGONAUT LANE
JACKSON, CA 95642
(209) 257-2603

NORTHERN CALIFORNIA COLLECTION
SERVICE, INC.,
Plaintiff,
vs.

RAYMOND H. PIERSON III,
Defendant.

AND RELATED CROSS ACTION.

ORDER AFTER HEARING

CASE NO.: 17 CV 10112

On March 1, 2019, this matter came before the court, the Honorable Renée C. Day presiding, for oral argument on law and motion.

Before the court were two motions to deem defendant/cross-complainant RAYMOND H. PIERSON III (hereinafter Pierson) a vexatious litigant and require the furnishing of security under the provisions of California Code of Civil Procedure (CCP) section 391. First, a motion filed and served December 3, 2018 by plaintiff/cross-defendant NORTHERN CALIFORNIA COLLECTION SERVICE, INC. (or NCCS). Second, a motion filed and served December 21, 2018 by cross-defendants GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES, INC. Appearances are noted in the minutes and the court took the matter under submission.

The motions filed December 3, 2019 and

December 21, 2019 to deem Pierson a vexatious litigant and for furnishing of security are GRANTED. The court further grants the request by moving party NCCS to enter a pre-filing order. Defendants' Requests to Take Judicial Notice of the official documents connected to Pierson's other actions and which were relied upon by the court in arriving at this ruling, are GRANTED. (Evid. Code § 452(d).)

Despite the untimely service of Pierson's opposition to the motion, the court did consider the opposition.[1] The court notes that while the opposition makes numerous allegations, it fails to adequately support the positions therein with legal authority. "Contentions are waived when a party fails to support them with reasoned argument and citations to authority."

(*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215.) The court further allowed PIERSON to be heard in opposition, wherein oral argument was heard for over one hour, and PIERSON raised arguments outside the scope of his written opposition.

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[1] Opposition was served five court days late (which equated to nine calendar days) and was served by mail, ni non-compliance with CCP §1005(b).

California's vexatious litigant statute was passed to curb misuse of the court system by those acting pro se who repeatedly file groundless lawsuits. (*Shalant v. Gerardi* (2011) 51 Cal.4th 1164, 1169.) While seemingly limiting, the vexatious litigant statutes have been held to be constitutional. (*Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780.) A vexatious

litigant's right to access the court is still protected, either by filing suit while represented by legal counsel, or by the granting of a pre-filing order if the litigant is suing in a self-represented capacity.

A defendant may identify a vexatious litigant by means of a motion that automatically stays proceedings. (CCP § 391.6.) A court may declare a person a vexatious litigant who "[i]n the immediately preceding seven-year period has **commenced**, **prosecuted**, or **maintained** in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." (CCP § 391(b)(1); 4 emphasis added.)

The filing of this motion establishes the point from which the seven year period of CCP §

391(b)(1) must be retroactively measured. (*Stolz .v Bank of America* (1993) 15 Cal.App.4th 217, 224.) In this case, the seven year period under examination runs from December 2011 to December 2018, and examines cases commenced, prosecuted or maintained by Pierson in a self-represented capacity. While appeals and writ proceedings generally qualify as "litigation" within the meaning of CCP § 391(a), where a writ petition is summarily denied, the petition does not necessarily qualify as a "litigation" for purposes of the statute. (*Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1172.) "[T]he summary denial of a writ petition that merely sought relief from pretrial rulings and did not constitute the exclusive means of obtaining appellate review would not qualify as a litigation

finally determined adversely... within the meaning of section 391, subdivision (b)(1), and thus cannot count toward the five litigations required for vexatious litigant status." (*Id.* at p. 1173.) On the other hand, writ petitions filed because a writ was the exclusive means of obtaining appellate review do qualify as "litigation" for the purposes of section 391. (*Ibid.*) Also, where an appeal was denied or dismissed by the appellate court, it constitutes a final adverse determination against the party for the purpose of the vexatious litigant statute.

(Id. at pp. 1173-1174.)

After reviewing and considering all the documents filed, including those documents judicially noticed at the request of the moving parties, the court finds substantial evidence is presented

establishing
Pierson has commenced, prosecuted or maintained
at least five actions as a self-represented litigant
in the past seven years, all of which have been
finally determined adversely to him. (CCP § 391(b)(1).)

The Court further finds the moving parties have
each shown there is not a reasonable probability
Pierson will prevail in the litigation. (CCP § 391.1.)
The court has evaluated all the material evidence
presented. (CCP $391.2.) The court notes Pierson,
by his opposition, fails to address the issue of his
reasonable probability of prevailing in the litigation,
and has effectively waived his opposition on this issue.

Therefore, under CCP § 391.3(a), the court shall order
Pierson to furnish security for the benefit of the moving

parties before the action can proceed. "Security" is defined as an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant. (CCP § 391(c).) The court has reviewed the moving parties' supplemental declarations filed in support of the amount of security requested. The indigence or pro per status of a vexatious litigant is not a factor in ordering security or setting the amount of security. (*McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, 1216.)

Posting Security

As to NCCS, Pierson is ordered to post security in the amount of $77,020.32 within thirty days of the date of service of this order. If Pierson fails to post security as ordered within thirty days, the cross-complaint shall be dismissed as to cross-defendant NCCS. (CCP § 391.4.)

As to GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES, INC., Pierson is ordered to post security in the amount of $63,723.10 within thirty days of the date of service of this order. This is significantly less than the amount requested by the moving party. However, the court finds this amount supportable using the low end of the range of estimated billable hours, and using the low end of the hourly billable rate ($185.00). If Pierson fails to post security as ordered

within thirty days, the cross-complaint shall be dismissed as to cross-defendants GERALD MCINTYRE, BETTY MCINTYRE, and COLLIERS REAL ESTATE MANAGEMENT SERVICES, INC. (CCP § 391.4.)

The pre-filing order lodged with the court shall be executed. (CCP § 391.7 (a).)

IT IS SO ORDERED

DATED: 3/27/19
RENÉE C. DAY
JUDGE OF THE SUPERIOR COURT