

APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COURT OF APPEAL - SECOND DIST.

F I L E D
Sep 09, 2024

EVA MCCLINTOCK, Clerk

B. Rosales Deputy Clerk

JANE DOE,

B327813

Plaintiff and Appellant,

(Los Angeles County
Super. Ct. No.
21SMCV02030)

v.

JACK DWOSH,

Defendant and
Respondent.

APPEALS from orders of the Superior Court of the County of Los Angeles, Edward B. Moreton, Judge. Affirmed, in part, and dismissed, in part.

Jane Doe, self-represented litigant, for Plaintiff and Appellant.

Yee & Associates, Steven R. Yee and Karlfeldt Su, for Defendant and Respondent.

I. INTRODUCTION

Plaintiff Jane Doe¹ filed a malicious prosecution action against her former boyfriend, David Danon (Danon), and his attorney, defendant Jack Dwosh (defendant). She appeals from an order granting defendant's special motion to strike her complaint pursuant to Code of Civil Procedure section 425.16² (anti-SLAPP motion)³. She also purports to appeal from other pre- and post-judgment orders, including the orders dismissing her first amended complaint and denying her motions to strike an attorney declaration and to file certain documents under seal.

We affirm the order granting the anti-SLAPP motion, including the intermediate orders denying the motions to disqualify the trial judge, and dismiss the other purported direct appeals as taken from nonappealable orders.

¹ Plaintiff filed her complaint and notices of appeal pursuant to Code of Civil Procedure section 367.3, which authorizes a person who is an active participant in the address confidentiality program (Gov. Code, § 6205 et seq.) to commence an action using a pseudonym. (See § 367.3, subd. (b)(1).)

² All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

³ “A ‘SLAPP’ is a “‘strategic lawsuit against public participation’” [citation], and special motions to strike under section 425.16 are commonly referred to as ‘[a]nti-SLAPP motions’ [citation].” (*Bonni v. St. John Health System* (2021) 11 Cal.5th 995, 1007, fn. 1 (*Bonni*).)

II. BACKGROUND

A. *Complaint*

On August 22, 2019, in a previous civil action between plaintiff and Danon, the trial court declared plaintiff a vexatious litigant as defined in section 391. Pursuant to that order, plaintiff was subject to the section 391.7 prefiling requirement of obtaining from the presiding judge of the superior court permission to file new litigation (prefiling order).

On February 1, 2021, the clerk of the superior court erroneously accepted for filing a complaint submitted by plaintiff, without permission, asserting causes of action against Danon and defendant for malicious prosecution, abuse of process, and intentional infliction of emotional distress (LASC case no. 21SMCV00227). On March 24, 2021, plaintiff filed a request for a prefiling order to allow her to continue prosecuting that civil action.

On October 28, 2021, the supervising judge of the civil division (supervising judge) granted, in part, and denied, in part, plaintiff's request for a prefiling order, authorizing her to file a new complaint asserting only a claim for malicious prosecution against Danon and defendant, but denying her leave to pursue the complaint asserting the abuse of process and intentional infliction claims (LASC case no. 21SMCV00227).

On October 27, 2021, plaintiff, who was self-represented, filed a new complaint initiating this action against Danon⁴ and

⁴ Prior to filing her opposition to the anti-SLAPP motion, plaintiff voluntarily dismissed Danon from the action on December 22, 2022.

defendant which asserted a single cause of action for malicious prosecution. Plaintiff premised her action against defendant on his conduct in filing, on behalf of Danon, a July 2020 petition for a domestic violence restraining order against her, following the trial court's denial of a prior similar petition two years earlier.

B. *Anti-SLAPP Motion*

Prior to responding to the complaint, defendant's counsel submitted a declaration in support of a request for an extension of time to respond pursuant to section 430.41 to allow the parties additional time to meet and confer over defendant's issues with the complaint. The filing of the declaration automatically extended defendant's deadline for responding by 30 days. Plaintiff moved to strike the declaration, claiming that defendant's counsel had made false averments about his attempts to meet and confer.

On June 28, 2022, defendant filed an anti-SLAPP motion and supporting declarations.⁵ Defendant argued that his filing of the second petition for a restraining order—the sole basis for the malicious prosecution claim against him—was protected activity within the meaning of the anti-SLAPP motion. He also argued that plaintiff could not meet her burden of demonstrating that she had a probability of prevailing on the merits under the second prong of the anti-SLAPP analysis. Citing *Siam v.*

⁵ Defendant initially filed his anti-SLAPP motion on June 10, 2022, but that motion did not redact identifying information about plaintiff. Following a court order requiring redaction, defendant's June 28, 2022, motion did include such redactions.

Kizilbash (2005) 130 Cal.App.4th 1563 (*Siam*) and *Bidna v. Rosen* (1993) 19 Cal.App.4th 27 (*Bidna*), defendant argued that, because California case law specifically prohibits malicious prosecution claims based on the filing of an unsuccessful petition for a domestic violence restraining order, plaintiff could not make the required second-prong showing as a matter of law.

Defendant supported the motion with his declaration explaining that he had filed the second petition for a domestic violence restraining order pursuant to Family Code section 4200, et seq.⁶ because plaintiff and Danon were previously in a dating relationship and had lived together. Defendant also included with his motion a request for attorney fees in the amount of \$5,915 supported by the declaration of his attorney.

On February 6, 2023, plaintiff filed her opposition to the anti-SLAPP motion, arguing, among other things, that the supervising judge's order authorizing her to file a malicious prosecution complaint established, as a matter of law, that she had a probability of prevailing on the merits. The only evidence she submitted in support of her opposition was a copy of the supervising judge's prefiling order finding that her malicious prosecution claim had sufficient merit to allow her to pursue it.

C. *Hearing and Ruling on Motion*

On February 22, 2023, the trial court held a hearing on plaintiff's motion to strike defense counsel's declaration and the anti-SLAPP motion and then denied plaintiff's motion to strike,

⁶ Defendant's citation to Family Code section 4200, et seq., was a typographical error, as his motion cites Family Code section 6200, et seq., the Domestic Violence Prevention Act.

granted the anti-SLAPP motion, and concluded that defendant was entitled to attorney fees as the prevailing party.

In its ruling, the trial court first addressed whether the anti-SLAPP motion was untimely based on the motion to strike counsel's declaration and concluded that (1) plaintiff had failed to carry her burden on her motion; and (2) even if the automatic 30-day extension of time to respond to the complaint was not triggered by defense counsel's declaration, the court had discretion to determine an otherwise untimely motion.

The trial court next considered whether the filing of the first amended complaint mooted the anti-SLAPP motion and ruled that, under the reasoning of *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1294 and *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1056, the motion was not moot.⁷

On the merits of the anti-SLAPP motion, the trial court determined that defendant's conduct in filing the petition for a restraining order constituted protective activity. It also concluded that plaintiff could not "meet her burden of showing a probability of prevailing on her sole claim for malicious prosecution because California courts have refused to extend the tort of malicious prosecution to restraining orders." The court cited *Bidna, supra*, 19 Cal.App.4th 27 and *Siam, supra*, 130 Cal.App.4th 1563, in support of its ruling.

Finally, the trial court determined that defendant was entitled to an award of attorney fees as the prevailing party on

⁷ Following its ruling on the anti-SLAPP motion, the trial court also ruled, without further discussion, that the first amended complaint was dismissed with prejudice.

the anti-SLAPP motion and granted the parties leave to file supplemental briefs on the issue of the amount of such fees.

D. *Denial of Other Prejudgment Orders*

On January 19, 2023, plaintiff moved to disqualify the judge presiding over the malicious prosecution action on the grounds of bias and discrimination. According to plaintiff, the judge's prior participation in a mandatory settlement conference in a different action between plaintiff and Danon demonstrated his bias against her and his ruling requiring the parties to meet and confer telephonically discriminated against her based on her disability.

On January 26, 2023, the trial court issued an order striking plaintiff's statement of disqualification for cause because "it demonstrate[d] on its face that no grounds for disqualification exist[ed]." The court advised that its determination of the disqualification issue was not an appealable order and must instead be challenged by a writ petition in the appellate court filed within 10 days of the order on the motion, citing section 170.3, subdivision (d).

On January 31, 2023, plaintiff again moved to disqualify the judge on grounds similar to those asserted in support of her prior disqualification motion.

On February 8, 2023, the trial court issued an order striking plaintiff's second attempt to disqualify the judge, noting that the grounds were similar to those in support of the first motion to disqualify and again advising plaintiff that the order could only be challenged by way of a timely writ petition.

On February 17, 2023, prior to the hearing on the anti-SLAPP motion, plaintiff filed several submissions, including a request to have documents filed under seal and third motion to disqualify the judge.

On February 22, 2023, following the trial court's ruling on the anti-SLAPP motion and denial of her third attempt at disqualification, plaintiff filed: (1) a supplemental brief protesting the attorney fee award against her and describing the trial judge as "biased"; (2) a fourth motion to disqualify the judge based, in part, on his ruling on the anti-SLAPP motion; and (3) a motion to reconsider the ruling on the anti-SLAPP motion.

On February 23, 2023, plaintiff filed another motion to file documents under seal which the trial court denied the next day.

On March 1, 2023, plaintiff filed a fifth motion to disqualify the judge claiming, among other things, that the judge had violated her civil rights as a person with disabilities.

On March 8, 2023, the trial court filed an order striking plaintiff's fourth and fifth attempts to disqualify the judge.⁸

E. *Notices of Appeal*

On February 23, 2023, plaintiff filed four notices of appeal from the trial court's: (1) February 22, 2023, order denying plaintiff's motion to strike defense counsel's declaration; (2) February 22, 2023, order granting the anti-SLAPP motion; (3) February 22, 2023, order denying her motion to file documents under seal; and (4) February 24, 2023, order denying her motion to file documents under seal. On March 10, 2023, plaintiff filed

⁸ Following entry of judgment, plaintiff filed two more motions to disqualify the judge, each of which the court struck.

an additional notice of appeal from the trial court's February 22, 2023, order dismissing the first amended complaint with prejudice.

F. *Judgment*

On March 9, 2023, the trial court filed a ruling awarding \$5,915 in attorney fees to defendant as the prevailing party on the anti-SLAPP motion. That same day, the court entered judgment in favor of defendant based on the order granting the anti-SLAPP motion which included the attorney fee award. Plaintiff filed a separate notice of appeal from the judgment on April 24, 2023, and that matter is pending (case no. B329404).

III. DISCUSSION

A. *Appealability*

A trial court's order is appealable when made so by statute. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696 (*Griset*).) In civil actions, section 904.1 is the primary statute that defines appealable judgments and orders. California is governed by the "one final judgment" rule which permits this court to review only those judgments that terminate the trial court proceedings by completely disposing of the matter in controversy. (*Griset, supra*, 25 Cal.4th at p. 697.) Interlocutory orders generally are not appealable. (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 754.)

Although plaintiff has filed five notices of appeal from various orders, the only order that is directly appealable is the

February 22, 2023, order granting the anti-SLAPP motion. (§425.16, subd. (i), § 904.1, subd. (a)(13).) Thus, we limit our review to the merits of that order and, pursuant to section 906,⁹ any other interlocutory orders issued prior to its entry that involve the merits of, or necessarily affect, that order. (*Fontani v. Wells Fargo Investments, LLC* (2005) 129 Cal.App.4th 719, 736, disapproved of on another ground by *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal. 4th 192, 203, fn. 5 (“Section 906 does allow for an appeal from an interlocutory order that involves the merits of, or necessarily affects, an anti-SLAPP order from which an appeal is taken. In other words, where the propriety of an otherwise nonappealable order affects the validity of an anti-SLAPP order, an appeal will lie from the otherwise nonappealable order”].)

B. *Waiver*

As to those orders that are reviewable on appeal, plaintiff's briefs contain no citations to the lengthy record on appeal (see Cal. Rules of Court, rule 8.204(a)(1)(C) [each brief on appeal must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”]). “As a general rule, “[t]he reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.”

⁹ Section 906 provides, in pertinent part: “Upon an appeal pursuant to Section 904.1 . . . , the reviewing court may review . . . any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party”

[Citations.] It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. [Citation.] If no citation "is furnished on a particular point, the court may treat it as waived." [Citation.]' [Citation.]" (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384.) "We look askance at [the] practice of stating what purport to be facts—and not unimportant facts—without support in the record. This is a violation of the rules, specifically rule 8.204(a)(1)(C) . . . , with the consequence that such assertions will, at a minimum, be disregarded. [Citation.]" (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846.)

The lack of *any citations* in plaintiff's briefs to the record on appeal severely hampers our ability to conduct a reasoned analysis of the merits of her various assertions.¹⁰ We therefore conclude that she has waived her challenges to those orders that are otherwise reviewable on appeal and affirm them on that basis.

C. *Anti-SLAPP Motion*

Even if we were to review the legal merits of plaintiff's challenge to the trial court's ruling on the anti-SLAPP motion, we would affirm the court's ruling.

¹⁰ Defendant pointed out this deficiency in plaintiff's briefing in his discussion of her challenges to the orders denying leave to file documents under seal; but plaintiff did not address the issue in reply.

1. Legal Principles

“[The anti-SLAPP] statute authorizes a special motion to strike a claim “arising from any act . . . in furtherance of [the plaintiff’s] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (§ 425.16, subd. (b)(1).)’ (*Wilson [v. Cable News Network, Inc.* (2019)] 7 Cal.5th [871,] 883–884.) [¶] Litigation of an anti-SLAPP motion involves a two-step process. First, ‘the moving defendant bears the burden of establishing that the challenged allegations or claims “aris[e] from” protected activity in which the defendant has engaged.’ (*Park [v. Board of Trustees of California State University* (2017)] 2 Cal.5th [1057,] 1061 [(*Park*)].) Second, for each claim that does arise from protected activity, the plaintiff must show the claim has ‘at least “minimal merit.”’ (*Ibid.*) If the plaintiff cannot make this showing, the court will strike the claim.” (*Bonni, supra*, 11 Cal.5th at p. 1009.)

“A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] Critically, ‘the defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech.’ [Citations.] ‘[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.’ [Citations.] Instead, the focus is on determining what ‘the defendant’s activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.’ [Citation.] ‘The only means specified in section 425.16 by which a moving defendant can satisfy the [“arising from”] requirement is to demonstrate that *the defendant’s*

conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e)

[Citation.] In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.” (*Park, supra*, 2 Cal.5th at pp. 1062–1063.)

“[A]t the second anti-SLAPP step, “a plaintiff responding to an anti-SLAPP motion must “state[] and substantiate[] a legally sufficient claim.”” [Citation.] Put another way, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient *prima facie* showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.”” [Citation.] “. . . However, we neither ‘weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant’s evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.”” [Citation.]” (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 791–792.) “[A] plaintiff’s burden at the second anti-SLAPP step is a low one, requiring only a showing that a cause of action has at least ‘minimal merit within the meaning of the anti-SLAPP statute.’ [Citation.]” (*Id.* at p. 793.)

“We review de novo the grant or denial of an anti-SLAPP motion.” (*Park, supra*, 2 Cal.5th at p. 1067.)

2. Analysis

Plaintiff’s sole claim against defendant was for malicious prosecution. “The plain language of the anti-SLAPP statute

dictates that every claim of malicious prosecution is a cause of action arising from protected activity because every such claim necessarily depends upon written and oral statements in a prior judicial proceeding.” (*S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 35.) Defendant therefore satisfied his first-prong burden of showing that plaintiff’s only claim against him arose from protected activity.

The burden therefore shifted to plaintiff to demonstrate that her claim had minimal merit. “To prevail in a malicious prosecution action under California law, a malicious prosecution plaintiff (the defendant in the underlying action) must show that (1) the plaintiff in the underlying action pursued a claim with subjective malice, (2) the claim was brought without objective probable cause, and (3) the underlying action was terminated on the merits in favor of the defendant.” (*Lane v. Bell* (2018) 20 Cal.App.5th 61, 63–64.) The only evidence plaintiff introduced in support of her claim was the prior order by the supervising judge permitting her to file her complaint. On appeal, she contends that the supervising judge ordered her to file the complaint, which has “merit”. We disagree.

The unsuccessful filing of a request for a domestic violence protective order, for policy reasons, cannot support a claim for malicious prosecution. (*S.A. v. Maiden*, *supra*, 229 Cal.App.4th at p. 36–37; see also *Siam*, *supra*, 130 Cal.App.4th at p. 1574; *Bidna*, *supra*, 19 Cal.App.4th at p. 30.) Accordingly, the trial court correctly granted defendant’s anti-SLAPP motion. (*S.A. v. Maiden*, *supra*, 229 Cal.App.4th at p. 41.)

D. *Other Orders*

In addition to her appeals from the trial court's ruling on the anti-SLAPP motion and the resulting judgment, plaintiff challenges several of the court's other rulings, including its rulings striking her numerous disqualification motions, the denial of her motion to strike the declaration of defense counsel, the order dismissing her first amended complaint, and the denial of two of her motions to file documents under seal, all without the requisite citations to the record. But, even assuming that plaintiff had not waived these challenges by failing to provide record cites in support of them, we would nevertheless affirm those orders that necessarily affect the ruling on the anti-SLAPP motion under section 906. And, as to those orders that are not appealable under section 906, we dismiss plaintiff's appeals under the one final judgment rule.

1. Disqualification

As to her disqualification motions, plaintiff maintains that the judge's refusal to recuse himself in response to her allegations of bias constituted a violation of her due process rights. For purposes of our analysis, we assume that only plaintiff's motions to disqualify that were filed *before* the order granting the anti-SLAPP motion sufficiently affect the subsequent ruling on that motion to allow us to review them under section 906 on the appeal from the order granting the anti-SLAPP motion. We will limit our discussion of the issue accordingly.

"[N]otwithstanding the exclusive-remedy provision of . . . section 170.3, 'a defendant may assert on appeal a claim of denial

of the due process right to an impartial judge.”” (*People v. Panah* (2005) 35 Cal.4th 395, 445, fn. 16.) “The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.” (*Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 242.) To establish a due process violation, ““there must exist “the probability of actual bias on the part of the judge.””” [Citation.]” (*People v. Peoples* (2016) 62 Cal.4th 718, 787.)

Plaintiff’s initial claim of bias stemmed from the judge’s prior participation in a mandatory settlement conference held in a separate action between plaintiff and Danon. Although she maintains that the judge obtained confidential information during that conference which biased him against her in this action, she fails to articulate what specific information the judge obtained or its relevance to this action. The judge’s prior participation in the settlement conference, without more, does not support plaintiff’s argument.

Plaintiff’s other claims of bias, including her complaints about the court’s resolution of certain meet and confer issues and service disputes, all arose from rulings that plaintiff perceived as adverse to her interests. But, a trial court’s rulings against a party, even if erroneous, do not, by themselves, support a charge of bias. (See *People v. Pearson* (2013) 56 Cal.4th 393, 447.)

2. Dismissal of First Amended Complaint

Plaintiff filed a notice of appeal from the minute order dismissing the first amended complaint. But that order was not signed by the trial court and therefore does not constitute an appealable dismissal order. (§ 581d [“All dismissals ordered by

the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes . . .”]; *Munoz v. Florentine Gardens* (1991) 235 Cal.App.3d 1730, 1731–1732.) Thus, even if plaintiff had supported her arguments concerning that order with citations to the record, her appeal from the dismissal order must be dismissed.

3. Motions to Strike and Seal

Although plaintiff also filed a notice of appeal from the trial court’s order denying her motion to strike defense counsel’s declaration, that is not a directly appealable order. Her appeal must therefore be dismissed.

Moreover, her arguments on appeal do not show that the order is subject to review under section 906. Her brief suggests that, if the trial court had granted the motion, it would have rendered the anti-SLAPP motion moot. But she provides no authority for this conclusion and fails to address the court’s ruling that, even if defense counsel’s declaration did not trigger the automatic extension, the court had discretion to hear an untimely filed anti-SLAPP motion. (See *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749–750.) We therefore cannot reach her arguments on appeal concerning that order.

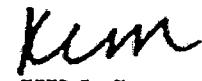
We similarly conclude that plaintiff’s purported appeals from two of the trial court’s orders denying her motions to seal must be dismissed under the one final judgment rule. And, her opening brief arguments concerning those orders fail to demonstrate any nexus between those orders and the order

granting the anti-SLAPP motion sufficient to allow review under section 906.

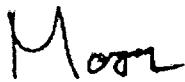
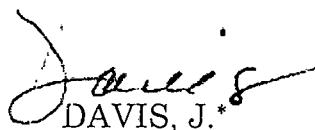
IV. DISPOSITION

The orders granting the anti-SLAPP motion and denying the disqualification motions are affirmed. The direct appeals from the orders dismissing the first amended complaint and denying the motions to strike defense counsel's declaration and seal documents are dismissed. No costs are awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS


KIM, J.

We concur:


MOOR, Acting P. J.
DAVIS, J.*

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

Court of Appeal, Second Appellate District, Division Five - No. B327813

S287520

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

JANE DOE, Plaintiff and Appellant,

DEC 18 2024

Jorge Navarrete Clerk

v.

JACK DWOSH, Defendant and Respondent.

Deputy

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

GUERRERO
Chief Justice

**Additional material
from this filing is
available in the
Clerk's Office.**