

SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division Eight - No. B267984 OCT 25 2017

S244348

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

SARA HASSMAN, Plaintiff and Appellant,

v.

SEASTROM & SEASTROM et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Filed 8/16/17

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.

FILED

Aug 16, 2017

JOSEPH A. LANE, Clerk

kstpierre Deputy Clerk

SARA HASSMAN,

Plaintiff and Appellant,

v.

SEASTROM AND SEASTROM
et al.,

Defendants and
Respondents.

B267984

(Los Angeles County
Super. Ct. No. BC580980)

APPEAL from judgments and orders of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Affirmed.

Sara Hassman, in pro. per., for Plaintiff and Appellant.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer and Marshall R. Cole for Defendant and Respondent Seastrom and Seastrom.

Callahan, Thompson, Sherman and Caudill and Joan E. Trimble for Defendant and Respondent Alan D. Liberman.

Cummings, McClorey, Davis, Acho & Associates and
Sarah L. Overton for Defendant and Respondent the Honorable
Claudia J. Silbar.

* * * * *

Plaintiff Sara Hassman filed this case alleging claims based on actions taken by an array of defendants during her 2010 divorce case. Sustaining demurrers and granting anti-SLAPP (strategic lawsuit against public participation) motions (Code Civ. Proc., § 425.16), the trial court eventually dismissed the claims against all defendants. Plaintiff only properly appealed the final judgments and order as to three of them. Because each had a valid defense, we affirm.

BACKGROUND

Acting without an attorney, plaintiff filed a 719-page complaint alleging myriad causes of action, all based on the divorce case with her now ex-husband that ended in a stipulated judgment in May 2010. She named a host of defendants associated with the divorce case, including her ex-husband, his attorneys, the trial judge who presided over the divorce case, the court-appointed therapist, two religious institutions, and her children's school, among others. Certain defendants filed demurrers, which the court sustained with leave to amend.

Plaintiff filed a 35-page first amended complaint (FAC) alleging four claims again based on defendants' actions in her divorce case: (1) intentional infliction of emotional distress, (2) fraud, (3) intentional misrepresentation, and (4) interference with contractual relations. Most of the defendants filed demurrers and several filed anti-SLAPP motions. Plaintiff filed

an “extremely untimely” opposition and the trial court disregarded it.

On the merits, the court sustained many of the demurrers with leave to amend and continued others. For the three defendants involved in this appeal, the case ended at the FAC. The court sustained defendant Judge Claudia J. Silbar’s demurrer without leave to amend on the ground of judicial immunity, given she was the judge who presided over the divorce case. The court sustained defendant Dr. Alan D. Liberman’s demurrer without leave to amend on the grounds of quasi-judicial immunity and litigation privilege because he was the therapist appointed in the divorce case to conduct reunification counseling for plaintiff and her minor son. The court granted an anti-SLAPP motion filed by defendant Seastrom & Seastrom, LLP (Seastrom), the attorneys who represented plaintiff’s ex-husband in the divorce case.

Plaintiff thereafter filed the 79-page second amended complaint (SAC), bringing the same causes of action, again all based on her 2010 divorce case. The court granted anti-SLAPP motions and sustained without leave to amend the demurrers brought by most of the named defendants. On February 17, 2016, the court issued a minute order dismissing all remaining defendants who had not yet been dismissed by way of a motion, citing Code of Civil Procedure section 583.410.¹

¹ Code of Civil Procedure section 583.410, subdivision (a) states: “The court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case.”

DISCUSSION

1. Scope of Appeal

Plaintiff filed four separate notices of appeal. Three of those notices timely and validly appealed the judgments in favor of Judge Silbar and Dr. Liberman and the order granting Seastrom's anti-SLAPP motion.

The fourth notice of appeal identified and attached only the February 17, 2016 minute order dismissing any defendants remaining *after* the court sustained the demurrers and granted the anti-SLAPP motions for most of the defendants named in the SAC. Plaintiff has not presented any cogent argument why this order was erroneous, so she forfeited any challenge to it. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [unrepresented appellant not exempt from procedural rules and will waive unsupported contentions].)² Because plaintiff did not appeal any other judgments or orders, she may not challenge them. (*Baker v. Castaldi* (2015) 235 Cal.App.4th 218, 225 [“Despite the rule favoring liberal interpretation of notices of appeal, a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed.”].) ←

2. Judge Silbar's and Dr. Liberman's Demurrers

We review the trial court's sustaining of a demurrer de novo, accepting as true all well-pleaded facts and giving the complaint a reasonable construction as a whole. (*Bergeron v.*

² Two defendants—Sinai Temple and The Kiken Group—filed respondent's briefs arguing the notice of appeal was ineffective as to them and addressing the merits of their demurrers. Given our conclusion the only valid notices of appeals involve Judge Silbar, Dr. Liberman, and Seastrom, we need not address their other contentions.

Boyd (2014) 223 Cal.App.4th 877, 881 (*Bergeron*).) We may affirm on any meritorious ground raised by the defendant. (*Ibid.*)

a. Judge Silbar

Plaintiff alleged Judge Silbar “intentionally, deliberately, outrageously and maliciously” signed the stipulated divorce judgment and “ordered several unlawful post judgment spousal support modifications and other unlawful actions.” Judge Silbar also “intentionally, deliberately, outrageously and maliciously issued criminal restraining orders against Plaintiff preventing her from seeing her children and took away her custody and visitation rights.” With regard to those orders, Judge Silbar both ignored plaintiff’s ex-husband’s false reports that she had violated them and maliciously accused plaintiff of violating them. Judge Silbar also maliciously accused plaintiff of displaying unruly behavior and of being a vexatious litigant. Finally, Judge Silbar knew or should have known the judgment was “unlawful and fraudulent.” Plaintiff also complained about several of Judge Silbar’s specific orders.

Because plaintiff’s claims are entirely based on Judge Silbar’s judicial acts while presiding over the divorce case, they are barred by judicial immunity. Judicial immunity “bars civil actions against judges for acts performed in the exercise of their judicial functions and it applies to all judicial determinations, including those rendered in excess of the judge’s jurisdiction, no matter how erroneous or even malicious or corrupt they may be.” (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 851 (*Howard*); see *Bergeron, supra*, 223 Cal.App.4th at p. 887.) While plaintiff suggests immunity does not apply because Judge Silbar’s actions were “criminal or unlawful,” judicial immunity “must be absolute, even to the malicious or corrupt judge.” (*Howard, supra*, at

p. 852.) Plaintiff's remedy was to appeal the divorce judgment, not to file a separate lawsuit attacking Judge Silbar's actions. (See *ibid.* [A judge's " 'errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption.' "].) Thus, Judge Silbar's demurrer was properly sustained. Plaintiff has not shown how she could remedy this defect, so leave to amend was properly denied. (*Bergeron, supra*, at p. 890.)

b. Dr. Liberman

Plaintiff alleged Dr. Liberman was a "licensed marriage and family therapist," who had been "appointed by Judge Silbar on August 3, 2009 to conduct reunification counseling for plaintiff and her minor son." In that role, he prepared a report allegedly containing "false, unfounded, misleading and accusatory statements about Plaintiff which were not supported with any psychological tests and clinical evaluations and many statements were based on hearsay." As a result of the report, Judge Silbar issued criminal restraining orders against plaintiff that prevented her from seeing her children and took away her visitation rights.

Plaintiff's claims against Dr. Liberman are based entirely on his acts related to the divorce case, so they are barred by the litigation privilege in Civil Code section 47, subdivision (b). The privilege applies to "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212 (*Silberg*).)

Courts have applied the litigation privilege to bar claims based on psychological evaluations in family law cases. (See

Gootee v. Lightner (1990) 224 Cal.App.3d 587, 591 [privilege barred professional negligence claim based on defendant's psychological testing for custody dispute]; *Howard, supra*, 222 Cal.App.3d at pp. 847, 863 [privilege barred tort claims based upon court-appointed psychologist's evaluation of plaintiff and family for custody and visitation]; see also *Silberg, supra*, 50 Cal.3d at p. 219 [privilege barred claims based on statements by attorney about suitability of psychologist for marital dissolution proceeding].)

Like the privileged statements in these cases, Dr. Liberman's statements were made (1) in a judicial divorce proceeding (2) by a court-retained therapist (3) to facilitate reunification between plaintiff and her son, and (4) they had a direct connection to the divorce case. Plaintiff presents no cogent argument to the contrary. Thus, Dr. Liberman's demurrer was properly sustained, and plaintiff has not shown she could remedy this defect if leave to amend were granted. (*Bergeron, supra*, 223 Cal.App.4th at p. 890.)

c. *Seastrom's Anti-SLAPP Motion*

Plaintiff alleged her ex-husband hired the Seastrom law firm to represent him during the divorce case. She based her claims against Seastrom on its failure to act in various respects during the divorce case, such as failing to provide an accounting for certain assets, failing to object to Dr. Liberman's psychological report, and failing to object to the restraining orders. In support of its anti-SLAPP motion, Seastrom submitted evidence showing it did in fact represent plaintiff's ex-husband in the divorce case and acted as opposing counsel to plaintiff, which included filing requests to reduce spousal support and obtain restraining orders against plaintiff.

A defendant may bring a special motion to strike claims “ ‘arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.’ ” (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 803 (*Bergstein*), quoting Code Civ. Proc., § 425.16, subd. (b)(1).) Under the applicable two-step review process, the trial court “first looks to see whether the moving party has made a threshold showing that the challenged causes of action arise from protected activity. [Citation.] If the moving party meets this threshold requirement, the burden then shifts to the other party to demonstrate a probability of prevailing on its claims. [Citation.] In making these determinations, the trial court considers ‘the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.’ ” (*Bergstein, supra*, at p. 803.) We review the trial court’s ruling de novo. (*Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141, 153 (*Thayer*).)

Seastrom has shown plaintiff’s claims are all based upon its protected activities while representing her ex-husband in the divorce case. “Statements made in litigation, or in connection with litigation, are protected” by the anti-SLAPP statute. (*Bergstein, supra*, 236 Cal.App.4th at p. 803; see *Thayer, supra*, 207 Cal.App.4th at p. 154 [“Numerous cases have held that the SLAPP statute protects lawyers sued for litigation-related speech and activity.”].) Thus, “if the plaintiff is a nonclient who alleges causes of action against someone else’s lawyer based on that lawyer’s representation of other parties, the anti-SLAPP statute is applicable to bar such nonmeritorious claims.” (*Thayer, supra*, at p. 158.) Plaintiff suggests Seastrom’s actions were unprotected

because they were illegal as a matter of law, but that narrow exception only applies where “ ‘either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law’ ” (*Bergstein, supra*, 236 Cal.App.4th at p. 804.)

Plaintiff has not made that showing here.

Because plaintiff's claims rested on Seastrom's protected activity, she was required to demonstrate a probability of prevailing. She offered no evidence to substantiate her claims, which is insufficient to carry her burden. (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 124.) Her claims are also barred by the litigation privilege because all of Seastrom's alleged acts were (1) undertaken in the divorce case (2) by attorneys representing plaintiff's ex-husband (3) to resolve the divorce, and (4) their acts were directly connected to the case. (*Silberg, supra*, 50 Cal.3d at p. 212.) Thus, the trial court properly granted Seastrom's anti-SLAPP motion.

DISPOSITION

The judgments dismissing Judge Silbar and Dr. Liberman, the order striking the claims against Seastrom, and the February 17, 2016 order are affirmed. Respondents Judge Silbar, Dr. Liberman, and Seastrom shall recover their costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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