Filed 5/28/15 Lopez v. Fishel Co. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARCO LOPEZ, Plaintiff and Appellant, v. THE FISHEL COMPANY, Defendant and Respondent.	G049678 (Super. Ct. No. 30-2012-00588601) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed. Motion for sanctions granted.

The Justice Law Center and Lee H. Durst for Plaintiff and Appellant.

Murtaugh Meyer Nelson & Treglia, Jillisa L. O'Brien and Jason J. Fratts for Defendant and Respondent.

* * *

Plaintiff Marco Lopez appeals from a judgment entered after the court sustained without leave to amend the demurrer of defendant The Fishel Company to the first amended complaint for personal injury. Plaintiff argues his claim was covered by an exception to the exclusivity of the Workers' Compensation statutory scheme, allowing him to file a civil action. We disagree and affirm the judgment.

Defendant filed a motion for sanctions, arguing the appeal was frivolous. We agree and award sanctions.

FACTS AND PROCEDURAL HISTORY

The facts in this case are simple. Plaintiff and Rafael Morales, a defendant in the action but not a party to this appeal, were employed by defendant. One day during the course of his employment Morales was driving a big rig in which plaintiff was a passenger. The truck was hit by another vehicle and plaintiff was injured as a result.

After the accident plaintiff, in propria persona, filed a form complaint for negligence. Defendant filed a demurrer to the complaint on the ground workers' compensation barred a civil action. Plaintiff did not oppose the demurrer, and the court sustained it on the basis of the exclusive workers' compensation remedy. (Lab. Code, § 3706.) The court took judicial notice of plaintiff's workers' compensation application in which he admitted the accident occurred during the course and scope of his employment. It granted plaintiff "conditional leave to amend" pursuant to Code of Civil Procedure section 472a, subdivision (c), if he could properly allege defendant had no workers' compensation insurance, thereby excepting the case from the workers' compensation statutory scheme.

Subsequently, an attorney filed an amended complaint on plaintiff's behalf, alleging defendant negligently hired Morales and, on information and belief, that defendant was self-insured and had "used that position to deny [p]laintiff medical coverage and needed medical treatment."

Defendant again demurred, based on the same grounds it raised the first time and on the further ground plaintiff had not complied with the court's order to allege defendant had no workers' compensation coverage. Plaintiff did not file an opposition.

The court sustained the demurrer without leave to amend based on the exclusivity of workers' compensation statutes. It took judicial notice of plaintiff's allegation the accident occurred during employment, the filing of plaintiff's workers' compensation claim, and the order approving compromise and settlement of that claim, although not "the claims and contentions set forth therein." Further, the Workers' Compensation Appeals Board has exclusive jurisdiction for delay in payment of or refusal to pay the settlement amount.

DISCUSSION

1. Demurrer to Amended Complaint

When we review a judgment entered upon the grant of a demurrer without leave to amend, we must construe the allegations liberally (Code Civ. Proc., § 452) and assume the properly pleaded allegations are true (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081). We may also consider any matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) If the demurrer can be sustained on any ground raised, we must affirm. (*Schifando,* at p. 1081.)

There is no question the court properly sustained the demurrer without leave to amend. Plaintiff alleged he was defendant's employee and was injured while on the job. The court took judicial notice of plaintiff's workers' compensation claim form and the compromise and release form showing plaintiff's claim was settled.

With few exceptions, the workers' compensation statutes provide an exclusive remedy for job-related injuries. (Lab. Code, §§ 3600, 5300; *Lopez v. C.G.M. Development, Inc.* (2002) 101 Cal.App.4th 430, 443.) Thus, absent an exception, a civil action may not be filed against an employer. (*Lopez*, at p. 443.) In sustaining the demurrer to the original complaint, the court granted plaintiff leave to amend if he could

plead such an exception, i.e., that defendant had no workers' compensation insurance. Plaintiff made no such allegation in the amended complaint.

It appears plaintiff may be trying to argue an exception based on the so-called dual capacity doctrine, to which he refers without any legal authority in support. "The dual capacity doctrine holds that if an employer occupies another relationship toward its employee that imposes a duty different from those arising from the employment relationship, the employer can be liable in tort for a breach of that duty. [Citations.]" (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 368.) But the Labor Code section 3602, subdivision (a) sets out the exclusivity of the workers' compensation statutory scheme and provides that even if the employer and employee "occupied another or dual capacity prior to, or at the time of," the plaintiff's injury, the plaintiff may not file an action for damages. (*Singh,* at p. 368.)

The extent of plaintiff's argument is the dual capacity exception applies because defendant "owned and insured the 2008 Chevy 6500 under a separate covenant operating in a third[-]party capacity." Plaintiff did not allege this theory in the amended complaint. Further, this statement is unclear and does not come close to satisfying the requirement a party make a reasoned legal argument in support of claims on appeal. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [issue may be forfeited absent reasoned legal argument].)

Nor are we persuaded by plaintiff's reference to an exception based on conduct violating public policy, including racial or sexual discrimination. Plaintiff did not plead any such facts and his brief is devoid of any discussion as to how this theory applies to this case.

We also reject plaintiff's citation to Labor Code section 3601, subdivision (a)(1), which provides an exception to worker's compensation exclusivity when the injury is caused by a coworker's intoxication. Plaintiff specifically did not allege this scenario, pleading only that Morales had "a history of heavy drinking," which defendant

failed to monitor. Instead, plaintiff alleged the accident was the result of Morales losing control of the vehicle because he was not licensed to drive that type of truck, had insufficient training to drive the truck, and was driving too fast, in addition to Morales's drinking history.

Plaintiff asserts defendant is self-insured, complaining it refused to authorize over $700,000 for his necessary medical treatment. But the compromise and release order shows the claim was fully settled. Any unhappiness with the result cannot be litigated in this forum. Plaintiff's argument the settlement did not include this lawsuit has no merit. This action itself is improper and in any event could not be included in a settlement of the workers' compensation claim.

Again without citing authority or making any reasoned legal argument, plaintiff makes offhand reference to the doctrine of respondeat superior. Respondeat superior makes an employer "liable for the torts of its employees committed within the scope of the employment. [Citation.]" (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296, fn. omitted.) That has nothing to do with whether there is an exception to the exclusivity of the workers' compensation scheme that would allow plaintiff to file a civil suit against defendant.

Finally, to the extent plaintiff made arguments that do not have discrete headings setting out the issues, in violation of court rules (Cal. Rules of Court, rule 8.204(a)(1)(B)), or are not sufficiently supported by reasoned legal argument or citations (*Benach v. County of Los Angeles*, *supra*, 149 Cal.App.4th at p. 852), they are forfeited.

Plaintiff did not request we grant him leave to amend and did not make the required showing of how he could state a valid cause of action. We do not see any way he could accomplish that.

2. Motion for Sanctions

When we find an appeal to be frivolous or filed solely to harass or delay, we may award sanctions against the offending party. (Code Civ. Proc., § 907; Cal. Rules

of Court, rule 8.276(a).) We may rely on either or both a subjective and an objective standard. "The subjective standard looks to the motives of the appealing party and his or her attorney, while the objective standard looks at the merits of the appeal from a reasonable person's perspective. [Citation.]" (*Kleveland v. Siegel & Wolensky, LLP* (2013) 215 Cal.App.4th 534, 556.)

Under the objective standard, as shown above, there was no valid basis for filing the complaint to begin with, much less the appeal. The workers' compensation body of law makes clear the statutory scheme is exclusive, absent a narrow set of exceptions. The court granted plaintiff conditional leave to amend if he could plead such an exception. He did not do so. Plaintiff summarily mentions a few exceptions in his brief but these were not pleaded in the complaint nor did plaintiff argue he could allege additional facts to support any such exception.

Further, plaintiff failed to make any reasoned legal argument in support of his claims, in violation of the California Rules of Court, another ground for awarding sanctions. (Cal. Rules of Court, rule 8.276(a)(2), (4).) Plaintiff did not "[p]rovide a summary of the significant facts limited to matters in the record" (rule 8.204(a)(2)(C)) nor did he include record references (rule 8.204(a)(1)(C)). In addition, he failed to support any of his claims with reasoned legal argument. (Rule 8.204(a)(1)(B).)

We are aware sanctions should be awarded only in the most egregious cases. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650-651.) But all of the circumstances convince us this is such a case. In addition to the wholly improper form of the brief, the contents are equally deficient. The brief is confusing and unclear. The case contains no unique issues or complicated facts, nor was there an argument that existing law should be extended, modified, or reversed, as might justify filing this appeal. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1422.) We do not believe a reasonable person would have thought it proper to file it.

Sanctions are awarded against plaintiff or against his lawyer or against both. We remand to the trial court to determine against whom the sanctions are to be awarded and the amount of sanctions. (See *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 461-462.) Where sanctions in excess of $1,000 are awarded against a lawyer, the lawyer and the clerk of the court are each required to report the award to the State Bar. (Bus. & Prof. Code, §§ 6068, sub. (*o*)(3), 6086.7, sub. (a); *Caro v. Smith* (1997) 59 Cal.App.4th 725, 740.) If the court orders sanctions in excess of $1,000 against plaintiff's counsel, it shall order counsel and the clerk of the court to report the award.

DISPOSITION

The judgment is affirmed. The motion for sanctions is granted. The matter is remanded to the trial court to determine against whom the sanctions are to be awarded and the amount. Sanctions are payable to defendant. If sanctions are in excess of $1,000 against counsel, the court shall order counsel and the clerk of the court to report the award to the State Bar. Defendant is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.