Hope Ranch Park Homes Association v. Mariposa Land Development Company

2004 | Cited 0 times | California Court of Appeal | September 21, 2004

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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Appellants Mariposa Land Development Company, Butterfly Land, LLC, and SPH Estates, LLC (collectively referred to as Mariposa), are undeterred by both trial and appellate court rulings that an easement along the perimeter of its property may be used by other Hope Ranch residents for horseback riding and other recreational uses. In defiance of these rulings, Mariposa caused "no trespassing" signs to be placed upon the easement in a continuing effort to interfere with its use.

After some of Mariposa's neighbors expressed their disagreement with Mariposa's flouting of the court's orders either by removing the "no trespassing" signs or yelling insults at the entrance gates to Mariposa's 37-acre property, Mariposa sued them for trespass. Mariposa now appeals the trial court's order striking its complaint against those neighbors, defendants and respondents Adrienne O'Donnell, Cody Swift, Jordan Hosea, through his guardian ad litem, Stephen Hosea, and Marc Kimbell, as a strategic lawsuit against public participation. (Code Civ. Proc., § 425.16 [the "anti-SLAPP" statute].) [1] The complaint alleged that O'Donnell had trespassed on Mariposa's property for the purpose of removing the "no trespassing" signs, and that the remaining defendants had shouted verbal insults in the course of another trespass. In moving to strike the complaint as an anti-SLAPP suit, defendants asserted that the conduct giving rise to the complaint was protected speech, in that it was undertaken as a response to a legal dispute between Mariposa and the Hope Ranch Park Homes Association (HRPHA) regarding use of the easement on Mariposa's property. Defendants further alleged that the expressive conduct targeted by the complaint either was lawful, or did not occur. The trial court granted the motion on its findings that defendants had met their prima facie burden of establishing that the complaint targeted protected speech, and that Mariposa failed to demonstrate a probability of succeeding on the merits of its claims.

We agree with the trial court that defendants made the necessary prima facie showing that the conduct giving rise to the trespass causes of action is protected by the First Amendment's free speech guarantee. The burden thus shifted to Mariposa to present evidence demonstrating a probability of prevailing on the merits of its claims. Because it failed to meet that burden through the production of admissible evidence, the complaint was properly stricken pursuant to the anti-SLAPP statute. Accordingly, we affirm.

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FACTS AND PROCEDURAL HISTORY

Hope Ranch is a common interest residential development in Santa Barbara County. HRPHA is comprised of Hope Ranch property owners who are responsible for enforcing the covenants, conditions and restrictions (CC & R's) governing the development, which include rules and regulations regarding the use and maintenance of 22 miles of bridle paths within the subdivision.

In 1998, Mariposa purchased a 37-acre parcel of Hope Ranch property that abuts Mariposa Drive and Llano Avenue. William Harger and his family have resided on the property ever since. The property was acquired subject to restrictions and easements contained in deeds by which title was conveyed to the original owner in 1930. Those deeds reserve a right of way over a 30-foot strip of land measured from the center of Mariposa Drive and Llano Avenue for use as a general road and bridle path by other Hope Ranch property owners. This easement extends approximately 20 feet onto the portion of Mariposa's property that abuts Mariposa Drive and Llano Avenue. Approximately 30 years ago, an historic easement was created when portions of the path were deviated beyond the recorded easement with the consent of the prior owners of the property.

In 2001, Mariposa caused obstacles to be placed upon the path that lies within the historic easement. After HRPHA removed those obstacles, Mariposa caused a row of boulders to be placed along the same path, thereby effectively preventing entry onto the easement. Mariposa's agents tried to prevent HRPHA from removing the boulders, but HRPHA was ultimately successful. In response, Mariposa, in its ongoing effort to frustrate use of the easement, caused shrubbery to be planted within the boundaries of the recorded easement.

In April of 2002, HRPHA sued for an injunction barring Mariposa or its agents from taking any further action to obstruct or otherwise interfere with the use of the bridle trails located within the recorded and historic easements. On April 8, the trial court issued a temporary restraining order allowing HRPHA to remove the obstructions and prohibiting Mariposa or its agents from taking any further action to block the trail. A preliminary injunction to that effect was issued on May 29, 2002. We subsequently affirmed that order on appeal in an unpublished opinion. (Hope Ranch Park Homes Association v. Mariposa Land Development Co. (Apr. 1, 2003, B158821).)

In a further effort to bar use of the easement, on April 5, 2002, Mariposa sought to impose legal barriers to its use. To achieve that result, Mariposa sued HRPHA for, among other things, trespass, contending that HRPHA had wrongfully entered and removed landscaping from Mariposa's property. That complaint was subsequently consolidated with HRPHA's action for injunctive relief. On November 6, 2002, Mariposa filed an amended complaint for trespass, a violation of the CC & R's, breach of fiduciary duty, conversion, negligence, quiet title, and for an injunction against a total of 29 defendants, including HRPHA, the Hope Ranch Riding Trails Association, and 27 individual Hope Ranch residents, including 16 current and former members of HRPHA's board of directors.

Hope Ranch residents Adrienne O'Donnell, Cody Swift, Jordan Hosea, and Mark Kimbell were among those named in the trespass cause of action. As to O'Donnell, it was alleged that on various unspecified occasions in 2002, she had "trespassed upon Plaintiffs' property for the specific purpose of engaging in acts of terror, directed to the family occupying Plaintiff's property. In this regard, O'Donnell pulled up and knocked over Plaintiff's 'no trespassing' staked signs on numerous occasions. O'Donnell also tore up and trampled Plaintiff's signs on numerous occasions in clear view of Plaintiff's security cameras at each gated entrance." As to Swift, Hosea, and Kimbell, it was alleged that on numerous unspecified occasions they had entered Mariposa's property and "yelled and screamed threats of violence and profanities and made hostile gestures and other aggressive movements directed at [Harger] with full knowledge that they were being videotaped by cameras located at gate entrances."

Twenty-two of the defendants, including O'Donnell, Swift, Hosea and Kimbell, moved to strike the first amended complaint pursuant to section 425.16. In support of her motion, O'Donnell submitted a declaration stating that she had been a Hope Ranch resident since 1984, and enjoyed use of the bridle trail several days a week as she ran from her home to the beach. She also stated that "[s]ometime near the end of 2001, I became aware that someone was trying to block access to the bridle path around plaintiffs' property, forcing pedestrians and horses into the roadway. I subsequently learned that [HRPHA] obtained an order from the court which permitted it to remove the obstacles blocking the path and restored the rights of Hope Ranch residents to continue using the bridle paths. [¶] . . . I also learned that despite the court order, the property owners were not allowing [HRPHA] to remove the landscaping and obstacles that blocked the path. . . . Sometime early in the summer of 2002, I noticed that someone had erected wooden posts on the bridle paths, about a foot from the edge of the roadway, and stapled paper [sic] 'no trespassing' signs to the posts. In my estimation, these signs were 'trespassing' on the easement owned by [HRPHA] for the benefit of all of the residents of Hope Ranch, including me. [¶] . . . Several times, in fits of pique and frustration with both plaintiffs' actions to blockade the community's bridle path easement as well as the slow pace by which [HRPHA] was enforcing our rights, I entered the bridle path, tore the signs off the posts, and then laid them on the ground next to the post. I would estimate that I did this a total of five or six times. The signs were the kind of plastic signs commonly found at a hardware store, costing no more than a dollar."

In support of his motion, Swift declared: "I am eighteen years old and a student at Laguna Blanca High School. I reside in Hope Ranch with my family. By reading the Santa Barbara News Press and by conversing with my mother and other residents of Hope Ranch, I became aware early last year that there was a dispute between plaintiffs and [HRPHA] over access to the bridle path easements which border plaintiffs' property. [¶] . . . I have never trespassed on plaintiffs' private property. I can recall only one instance where I traveled on the bridle path easement bordering plaintiffs' private property. I cannot remember the exact date, but it was near the beginning of May 2002. My friend Jordan Hosea and I were riding our skateboards on the paved streets around Hope Ranch. As we rode along Mariposa Drive I noticed that there was a paper 'no trespassing' sign attached to a wooden post, which was erected on the bridle path. To demonstrate my opinion of the efforts to block access to the

path and to show my support for [HRPHA's] efforts to protect the path, I stepped from the street onto the bridle path and then knocked over the sign. To my knowledge I was within the established bridle path easement at all times." Swift also stated that on that occasion, he and Hosea had yelled at a Mariposa security guard who was videotaping them. He also stated that "[a]pproximately one week later, I wrote a letter of apology for knocking over the sign to the Harger family that lives in the house on plaintiffs' property. In the letter I offered to pay for any damage I caused to the sign." A copy of the letter was included as an exhibit.

Hosea and Kimbell each submitted declarations denying they had ever entered the bridle path during the time period in question, although Hosea verified that he was present on the occasion described in Swift's declaration and had yelled at one of Mariposa's security guards. Kimbell denied participating in any of the acts alleged in the complaint, and had "no idea" why he had been named as a defendant. Hosea also admitted that he and Swift had yelled at plaintiffs' security guard on one occasion.

After the motions were filed, Mariposa agreed to dismiss its first amended complaint against all of the moving defendants except O'Donnell, Swift, Hosea, and Kimbell, in exchange for which the dismissed parties agreed not to sue Mariposa for malicious prosecution. Mariposa opposed the remaining defendants' motions with declarations from Harger and a Mariposa security guard. Harger declared, among other things, that the "no trespassing" signs at issue were located "beyond any easement and were not on the bridle trail." He also stated that Swift, Hosea and Kimbell had stopped at the gates of his property on two occasions and yelled, "Come on out. Get your guns you mother f-ers. We don't want you mother f-ers here in Hope Ranch."

No objections were tendered to defendants' declarations. Defendants, however, filed lengthy and detailed objections to Mariposa's declarations and exhibits, each of which were sustained by the trial court as they related to Mariposa's claims for trespass. [2]

After a hearing, the trial court found that defendants had met their initial burden of establishing that the acts complained of were undertaken in furtherance of free speech rights. After granting defendants' evidentiary objections to Mariposa's declarations and the exhibits attached thereto, the court further found that Mariposa had failed to meet its burden of demonstrating a probability of prevailing on the merits of its trespass claims and accordingly granted the motions. This appeal followed.

DISCUSSION

I. General Legal Principles

Section 425.16, subdivision (b) provides in relevant part that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject

to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Acts protected under the statute include "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

The purpose of the anti-SLAPP statute is "to encourage continued participation in matters of public significance," and in order to achieve that end it "shall be construed broadly." (§ 425.16, subd. (a); see also Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 59-60.) Accordingly, "whenever possible, [courts] should interpret the First Amendment and section 425.16 in a manner 'favorable to the exercise of freedom of speech, not its curtailment.'" (Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106, 1119, fn. omitted, quoting Bradbury v. Superior Court (1996) 49 Cal.App.4th 1108, 1114, fn. 3.)

"Resolution of an anti-SLAPP motion 'requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue," as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.' [Citation.]" (Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal.4th 728, 733.) "'To satisfy this prong, the plaintiff 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.]' [Citation.]" (Zamos v. Stroud (2004) 32 Cal.4th 958, 965.) Whether the parties met their respective burdens in this regard is a question of law subject to our de novo review. (Ibid.) In conducting this analysis, we do not consider any evidence to which objections were sustained in the trial court where those rulings are not challenged in the parties' briefs on appeal. (Curtis v. Santa Clara Valley Medical Center (2003) 110 Cal.App.4th 796, 803, fn. 4.)

II. The Anti-SLAPP Motions

A. O'Donnell

Mariposa's complaint against O'Donnell for trespass is premised on the allegation that she

unlawfully entered Mariposa's property and removed "no trespassing" signs. Although this conduct does not constitute "speech" in the literal sense, the anti-SLAPP statute expressly applies not only to spoken words, but also to any conduct undertaken in furtherance of free speech rights in connection with an issue of public interest. (§ 425.16, subd. (e)(4).) Mariposa does not take issue with the trial court's conclusion that the bridle trail dispute qualifies as an issue of public interest, or that O'Donnell's conduct may have been intended to express an opinion on the subject. Nevertheless, Mariposa contends that O'Donnell failed to make out a prima facie case that the complaint against her "arises from" conduct undertaken in furtherance of her free speech rights as contemplated by the anti-SLAPP statute, because it targets her illegal trespass onto Mariposa's property, as distinguished from any opinion she intended to express in the course of that trespass.

To the extent Mariposa argues that O'Donnell must demonstrate an intent to chill her free speech rights in order to make out her prima facie case under section 425.16, the Supreme Court has concluded otherwise. (Equilon Enterprises v. Consumer Cause, Inc., supra, 29 Cal.4th at pp. 58-59.) Moreover, Mariposa's focus on the legality of O'Donnell's conduct at this point of the analysis "'confuses the threshold question of whether the SLAPP statute [potentially] applies with the question whether [an opposing plaintiff] has established a probability of success on the merits.' [Citation.]" (Navellier v. Sletten (2002) 29 Cal.4th 82, 94.) "'[T]he Legislature did not intend that in order to invoke the special motion to strike the defendant must first establish her actions are constitutionally protected under the First Amendment as a matter of law.' [Citations.] Instead, under the statutory scheme, a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis, and then permit the parties to address the issue in the second step of the analysis, if necessary. [Citation.] Otherwise, the second step would become superfluous in almost every case, resulting in an improper shifting of the burdens. [Citation.]" (Chavez v. Mendoza (2001) 94 Cal.App.4th 1083, 1089-1090; see also Kashian v. Harriman (2002) 98 Cal.App.4th 892, 910-911, fn. omitted [recognizing that "conduct that would otherwise come within the scope of the anti-SLAPP statute does not lose its coverage . . . simply because it is alleged to have been unlawful or unethical. If that were the test, the statute . . . would be meaningless"].)

Were we to adopt Mariposa's reasoning, we would have to conclude that trespass causes of action are categorically immune from attack under the anti-SLAPP statute. Such a result would be contrary to the legislative intent. "'[N]othing in the statute itself categorically excludes any particular type of action from its operation.' [Citation.]" (Jarrow Formulas, Inc. v. LaMarche, supra, 31 Cal.4th at p. 735.) If the Legislature had intended to exclude trespass claims, it would have included them in the list of actions to which "[t]his section shall not apply." (§ 425.16, subd. (d) [excluding "any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor"].) "The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so." (Jarrow, at p. 735.) The statute contemplates that free speech issues may be implicated in virtually any cause of action, including those in which trespass is alleged.

As Mariposa correctly notes, admittedly illegal conduct is not protected under the anti-SLAPP statute, regardless of whether it is intended to be expressive. (Chavez v. Mendoza, supra, 94 Cal.App.4th at p. 1090.) Here, however, O'Donnell has not conceded that a trespass occurred, or that her conduct was otherwise illegal. According to O'Donnell, she never ventured onto Mariposa's private property. She declared that the signs she removed had been posted within the path of the bridle trail easement, in direct violation of the preliminary injunction. She also disputes Mariposa's assertion that she had no right to remove the signs. If the trier of fact ultimately accepted the truth of these assertions, O'Donnell would not be liable for trespass. (See Pen. Code, § 602, subd. (l)(1) [defining crime of trespass as an entry onto land without the owner's permission].) Because the legality of O'Donnell's actions is disputed, "the threshold element [of the] section 425.16 inquiry has been established. [Citations.]" (Governor Gray Davis Com. v. American Taxpayers Alliance (2002) 102 Cal.App.4th 449, 460.) [3] The burden therefore shifted to Mariposa to raise a factual issue over O'Donnell's claim that no trespass occurred. To do so, it was incumbent upon Mariposa to offer admissible evidence that O'Donnell had trespassed on its property. Mariposa failed to produce such evidence, and the naked allegation of trespass in the complaint is insufficient to defeat the anti-SLAPP statute.

The cases cited by Mariposa are inapposite. In Paul v. Friedman (2002) 95 Cal.App.4th 853, the court rejected the defendant's claim that his disclosures of private information were protected petitioning activity because they were made in connection with a securities arbitration proceeding. (Id., at pp. 866-867.) The other case cited by Mariposa, Kajima Engineering & Construction, Inc. v. City of Los Angeles (2002) 95 Cal.App.4th 921, concluded that the filing of a cross-complaint is not automatically petition-related activity. (Id., at p. 929.) Both of these cases merely recognize that the anti-SLAPP statute protects only that activity which is targeted by a complaint. Despite Mariposa's claim to the contrary, its complaint against O'Donnell targets the very activity that it concedes was expressive-i.e., her act of removing the "no trespassing" signs.

Having established that O'Donnell had made a prima facie showing that Mariposa's complaint against her arises from protected speech, the burden shifted to Mariposa to demonstrate a probability of success on the merits. On appeal, Mariposa asserts that the acts admitted to by O'Donnell constitute trespass as a matter of law because the easement on which she entered is limited to use as a bridle trail. The record reflects, however, that the easement provides a right of way for general road purposes as well as a bridle trail.

Mariposa also asserts that O'Donnell "admitted" causing damage to a fence on the property. The record belies this assertion. According to O'Donnell, she merely removed "no trespassing" signs and laid them on the ground. O'Donnell also asserted that she never ventured beyond the boundaries of the easement. Mariposa offered Harger's declaration to dispute this, but the trial court sustained defendants' evidentiary objections to that evidence. Contrary to Mariposa's claim at oral argument, the trial court's rulings on defendants' objections are not challenged in Mariposa's opening or reply briefs. Mariposa has therefore waived any right to challenge those rulings on appeal. (Curtis v. Santa

Clara Valley Medical Center, supra, 110 Cal.App.4th at p. 803, fn. 4.) Because Mariposa offered no admissible evidence to rebut the assertions in O'Donnell's declaration, it failed as a matter of law to establish a reasonable probability of succeeding on the merits of its claim against her. Accordingly, the trial court properly struck the complaint against her pursuant to section 425.16.

B. Swift, Hosea, and Kimbell

The trespass cause of action against Swift, Hosea, and Kimbell alleges that they "yelled and screamed threats of violence and profanities and made hostile gestures and other aggressive movements directed at [Harger] with full knowledge that they were being videotaped by cameras located at gate entrances." In its reply brief, Mariposa asserts that Swift, Hosea, and Kimbell "were not sued because they yelled and screamed profanities and made hostile gestures. They were sued because they trespassed onto [Mariposa's] property and destroyed [Mariposa's] private property." The record is to the contrary. The trespass cause of action against Swift, Hosea, and Kimbell is based on the fact that statements were purportedly made while on Mariposa's property. There is no allegation in the complaint that any of these defendants removed signs or otherwise damaged the property.

Accordingly, our analysis focuses on the factual allegations in the complaint, without regard to whether Mariposa may have been able to plead other theories of liability. With regard to Swift, Hosea, and Kimbell, Mariposa has conceded that any statements attributed to them in the complaint were an exercise of their free speech rights. The burden thus shifted to Mariposa to demonstrate a probability of success on the merits of its claim. (§ 425.16, subd. (b)(1).) As we have stated, Mariposa failed to produce any admissible evidence on this point. Accordingly, the trial court properly dismissed the complaint with regard to Swift, Hosea and Kimbell. [4]

Mariposa contends that the motion was improperly granted as to Kimbell because he submitted a declaration denying any involvement in the matter alleged in the complaint. According to Mariposa, Kimbell's denial precludes him from obtaining relief under the anti-SLAPP statute. We are not persuaded. Our inquiry on the first prong under section 425.16 is whether the plaintiffs' complaint targets constitutionally protected activity. Whether the defendant actually performed that activity is addressed in the second prong. Because the cause of action against Swift, Hosea, and Kimbell targets constitutionally protected activity, Mariposa could only survive the anti-SLAPP statute by presenting evidence from which a jury could find in their favor on that claim. Mariposa did not present any such evidence, so the complaint against Swift, Hosea and Kimbell was properly stricken under section 425.16.

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

We concur:

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GILBERT, P.J.

COFFEE, J.

1. All statutory references are to the Code of Civil Procedure, unless otherwise noted.

2. The majority of defendants' objections were sustained on lack of foundation and hearsay grounds. For example, the declarations did not state that either Harger or his security guard had actually seen any of the defendants commit the acts attributed to them. The trial court also sustained defendants' objection to Harger's statement that "[t]he [no trespassing] signs were beyond any easement and were not on the bridle trail" for lack of foundation and personal knowledge.

3. For the first time on appeal, Mariposa also contends that O'Donnell's act of destroying the "no trespassing" signs amounts to criminal vandalism. Mariposa cannot assert this new theory of liability for the first time on appeal. (See, e.g., Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478, 1489; see generally, Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2003) ¶ 8:229 et seq., p. 8- 113 et seq.) In any event, O'Donnell asserted in her declaration that she merely removed the signs from their posts, and that she did not damage them in doing so. If the trier of fact accepted this assertion as true, it would have to find that O'Donnell did not vandalize Mariposa's property. (See Pen. Code, § 594 [defining vandalism as the damage or destruction of another's property].)

4. In support of his anti- SLAPP motion, Swift submitted a declaration denying the allegations in the complaint. He admitted, however, that on one occasion he had gone onto the bridle trail and removed a "no trespassing" sign. Because Mariposa did not amend the complaint to add this allegation as a basis for its trespass cause of action against Swift, our analysis is not affected by this new evidence.