



Kunst v. Eckhardt

2008 | Cited 0 times | California Court of Appeal | May 12, 2008

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The trial court declared Liisa Kunst to be a vexatious litigant. Kunst contends that the order is not supported by substantial evidence. We do not reach the merits of her argument because there is no appealable order.

FACTS

Kunst has pursued a series of court actions against respondent Theresa Eckhardt. Acting in propria persona, Kunst filed five applications for a temporary restraining order (TRO) between 2002 and 2005, claiming that Eckhardt was harassing and threatening her. All of the applications for a TRO were denied ex parte, save one. The one TRO that issued was dissolved after the court conducted an evidentiary hearing and found that Kunst failed to prove harassment.

After Kunst filed her third application for a TRO, the trial court ordered her not to file any future applications "repeating and/or alleging . . . any of the factual allegations" previously made against Eckhardt. It also ordered Kunst to pay \$2,500 for Eckhardt's attorney fees and costs. Despite this order, Kunst filed two more applications for a TRO, repeating the same allegations of stalking and harassment.

Apart from Kunst's five unsuccessful applications for restraining orders, she pursued numerous other actions against Eckhardt in the trial court, as well as an appeal that was dismissed after she defaulted. She filed a complaint against Eckhardt; tried to quash a levy arising from the attorney fees she owed; and filed a declaration with the court regarding Eckhardt's alleged bad conduct.

On December 30, 2005, Eckhardt filed a motion to have Kunst declared a vexatious litigant. After a hearing, the court granted Eckhardt's motion. The court found several bases for declaring Kunst to be a vexatious litigant. First, Kunst relitigated settled issues of fact and law, twice violating the court order directing her not to reassert the same factual claims against Eckhardt. Second, Kunst filed unmeritorious motions, pleadings and other papers, including five ex parte applications for a TRO, burdening the court system and causing Eckhardt to expend substantial attorney fees.



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DISCUSSION

Appeal is taken from the order declaring Kunst to be a vexatious litigant. Kunst's brief does not address whether the order is appealable. (Cal. Rules of Court, rule 8.204(a)(2)(B).) We sent a letter requesting supplemental briefing on the issue of appealability. (Gov. Code, § 68081.) Kunst did not respond to our request for further briefing.

"A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment." (Griset v. Fair Political Practices Com. (2001) 25 Cal.4th 688, 696.) "A trial court's order is appealable when it is made so by statute." (Ibid.) The issue of appealability cannot be waived: even if no party has raised it, this Court must decide whether it has jurisdiction. (In re Marriage of Griffin (1993) 15 Cal.App.4th 685, 689.)

We found no statutory authority permitting direct review of an order declaring someone a vexatious litigant. The general statute on appeals does not authorize an appeal. (Code Civ. Proc., § 904.1.) The statutes on vexatious litigants do not authorize an appeal. (Code Civ. Proc., § 391 et seq.)

Appeal may be taken from a "final judgment[] of dismissal" after a vexatious plaintiff fails to furnish a court-ordered bond. (Roston v. Edwards (1982) 127 Cal.App.3d 842, 845-846; Holcomb v. U.S. Bank Nat. Assn. (2005) 129 Cal.App.4th 1494, 1498; Childs v. PaineWebber Incorporated (1994) 29 Cal.App.4th 982, 985, fn. 1.) As noted in In re Bittaker (1997) 55 Cal.App.4th 1004, 1008, an order declaring someone a vexatious litigant is "non-appealable, but petitioner could have sought its review in conjunction with an appeal from some subsequent otherwise appealable judgment or order." Also, appeal may be taken from an order refusing to dissolve an injunction that prevents a vexatious litigant from filing suit. (Lockett v. Panos (2008) 161 Cal.App.4th 77, 89-90; Code Civ. Proc., § 904.1, subd. (a)(6).)

Appeal may be taken from an order declaring someone a vexatious litigant when the order is made after judgment is entered for the defendants, while the plaintiff's motion for new trial is pending. (Bravo v. Ismaj (2002) 99 Cal.App.4th 211, 222.) In Bravo, the court entered judgment in favor of the defendants. The plaintiff filed a notice of his intent to move for a new trial. While the motion was pending, the defendants sought to have the court declare the plaintiff a vexatious litigant, because he threatened to file a new lawsuit against them. (Id. at p. 218.) "Because the court had not yet ruled on Bravo's new trial motion, the case was still pending when defendants filed their vexatious litigant motions." (Id. at p. 222.) Review was feasible in Bravo because the vexatious litigant determination arose after an appealable judgment was entered against the plaintiff, while a posttrial motion was pending.

In this case, appellant Kunst has not directed our attention to an order of dismissal or final judgment. Absent an appealable final judgment or order of dismissal, Kunst's remedy was to pursue a timely petition for writ of mandamus. (See First Western Development Corp. v. Superior Court (1989)



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212 Cal.App.3d 860, 871 [writ petition seeking to require a bond from someone declared a vexatious litigant].) Kunst did not seek timely writ review, and we do not have jurisdiction to entertain an appeal.

DISPOSITION

The appeal is dismissed. Respondent Eckhardt is entitled to recover her costs from Kunst. (Cal. Rules of Court, rule 8.278(a)(2).)

We concur: DOI TODD, J., CHAVEZ, J.

