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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JOE PAT HAWKINS et al., Plaintiffs and Appellants, v. TRAVELERS INSURANCE CO. et al., Defendants and Respondents.	A125526 (San Francisco City and County Super. Ct. No. 485317)

Joe Pat Hawkins (Hawkins) and Paula Hawkins, in propria persona, appeal from judgments of dismissal after orders sustaining demurrers to their first amended complaint. They contend that they were denied due process in the underlying proceedings and that the court erred in dismissing their complaint. Hawkins also contends that the court erred in declaring him a vexatious litigant. We affirm.

I. FACTUAL BACKGROUND

On February 27, 2009, Hawkins and his wife, Paula, filed a first amended complaint alleging that in 1991 Hawkins sustained injuries from toxic chemical exposure arising from his employment with Levitz Furniture company. Along with Levitz, Hawkins named as defendants Travelers Insurance and Travelers Property Casualty Insurance (Travelers); Hanna, Brophy, McAlleer & Jensen, LLP (Hanna, Brophy); Francie Lehmer; Richard Foley; Richard Jacobsmeyer; James Vandersloot (Vandersloot); Vincent Scotto; and Scotto's legal assistant, Timothy Egan (Egan); the Workers'

Compensation Appeals Board (WCAB)[1]; and DWC Judge Sauban-Chapla (Judge Chapla).

Defendants demurred to the complaint, moved to strike the Hawkinses' demand for punitive damages, and moved to declare Hawkins a vexatious litigant. Defendants argued that Hawkins had been litigating his work-related injuries for approximately 20 years,[2] and that he had filed an action virtually identical to the one before the court on August 8, 2008. The trial court dismissed that complaint on the ground that it lacked jurisdiction to adjudicate Hawkins's workers' compensation claims.

In the present action, Hawkins has named several additional parties that were not named in the August 2008 complaint—Egan; Francie Lehmer and Richard Foley of Hanna, Brophy[3]; and Judge Chapla and the WCAB—but the allegations remain substantially identical to the August 2008 complaint. With the exception of Jacobsmeyer and Levitz,[4] defendants demurred to the complaint and moved to declare Hawkins to be a vexatious litigant. They alleged that the complaint was unintelligible but that any claims against them were barred by the statute of limitations or were within the exclusive remedy and jurisdiction provisions of the Workers' Compensation Act. The trial court sustained the demurrers and entered an order declaring Hawkins to be a vexatious litigant.

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[1] The Division of Workers' Compensation (DWC) responded to the complaint because the Hawkinses erroneously named the Workers' Compensation Appeals Board.

[2] Hawkins filed a workers' compensation claim in connection with his Levitz employment in 1990 and has continually litigated issues in connection with that claim before the WCAB, the trial court, the Court of Appeal, and our Supreme Court. He also unsuccessfully sued Mohawk Finishing Co. and other companies he contended created the toxic chemicals to which he was allegedly exposed at Levitz. Hawkins's claim before the WCAB was denied on the grounds that it was barred by the statute of limitations and by collateral estoppel.

[3] Hanna, Brophy was named in the August 2008 complaint.

[4] Jacobsmeyer was Hawkins's attorney in or about 1994; Hawkins fired him.

II. DISCUSSION

The standard of review governing an appeal from a judgment after the trial court sustains a demurrer without leave to amend is well established. " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The Hawkinses' brief here is largely redundant and unintelligible. It sets forth an array of confusing and conclusory allegations. The brief is disorganized, repetitive, and largely incoherent. (See Cal. Rules of Court, rule 8.204(a)(1), (2)(A-C).) It is the appellant's burden on appeal to show both that the trial court committed error, and that the error was prejudicial to the appellant. (*In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575.) " 'In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration.' [Citation.]" (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.) Indeed, "failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal . . . .'. . . " 'Contentions supported neither by argument nor by citation of authority are deemed to be without foundation, and to have been abandoned.' [Citations omitted.]" [Citation.] Nor is an appellate court required to consider alleged error where the appellant merely complains of it without pertinent argument. [Citation.]' " (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.)

The Hawkinses' status as pro. per. litigants does not excuse them from their duty to comply with the rules. An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Insofar as we have been unable to ascertain what the Hawkinses contend on appeal, and insofar as they have failed to substantiate their claims with proper citations to the record and legal authority, we treat their claims as waived. "We [can address only] those arguments that are sufficiently developed to be cognizable. To the extent [the Hawkinses] perfunctorily assert [their] claims, without development and, indeed, without a clear indication that they are intended to be discrete contentions, they are not properly made, and are rejected on that basis." (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.) Despite the deficiencies in the Hawkinses' briefs, we address whether the court erred in sustaining a demurrer to their first amended complaint without leave to amend.

The causes of action pled or implied by the first amended complaint are all based upon the injuries sustained by Hawkins during his employment with Levitz as a result of his exposure to toxic substances, the subsequent alleged malpractice by attorneys he hired to address his work-related claims, and improprieties in the proceedings before the WCAB. As respondents Travelers, DWC, Judge Chapla, and Vandersloot (respondents) argue, these claims are either time barred or not within the jurisdiction of the superior court.

A. The Applicable Statute of Limitations Bars the Hawkinses' Claims

As this appeal arises after the sustaining of a demurrer, the general rule is that we "assume the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn therefrom." (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 789, fn. 3.)

The Hawkinses allege in the first amended complaint that Hawkins left his employment with Levitz on June 13, 1991, not knowing the full extent of his injuries. They claim that they did not learn the extent of Hawkins' exposure to toxic substances

until reading Dr. Donnelly's report (the Donnelly report) in June 1995. They asserted that there was a conspiracy among defendants to hide the report from them.

While it is unclear from the complaint what claims are being asserted against respondents, the statute of limitations applicable to any claim for fraud or legal malpractice has expired. For example, the claims against Vandersloot relate to his legal representation of Hawkins, which ended on June 7, 1995, when Hawkins fired him. Pursuant to Code of Civil Procedure section 340.6, subdivision (a), a claim for legal malpractice must be "commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." Although there are several provisions that may toll the period of time in which to bring a legal malpractice action, none of these are alleged in the complaint or are otherwise applicable. (See Code Civ. Proc., § 340.6, subd. (a).) The limitations period applicable under the facts alleged thus commenced in 1995 when the Hawkinses discovered the Donnelly report and learned the facts essential to the malpractice claim. (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 190 [professional malpractice action against attorney accrues when plaintiff knows or should know all material facts essential to his or her cause of action].

For the same reasons, the Hawkinses' claims against the other attorneys that represented Hawkins—Scotto and Egan[5]—also fail. Hawkins hired Scotto to represent him in March 1996 in connection with the workers' compensation proceedings. The Hawkinses allege that Scotto and Egan mishandled the Donnelly report. Here, again the allegations are unclear, but it can be discerned that the Hawkinses do not allege any facts asserting Scotto or Egan made any omission or committed any wrongful act within the applicable statute of limitations period. Moreover, Egan was never an attorney for Hawkins; hence, there are no facts supporting a cause of action for legal malpractice

[5] Egan, now an attorney, was a legal assistant for Scotto.

against him. (*Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1010 [no duty of care owed where no attorney-client relationship exists].)

To the extent the allegations in the complaint allege fraud or concealment, they are also barred by the statute of limitations. Code of Civil Procedure, section 338, subdivision (d) sets forth a three-year limitations period for an action seeking relief for fraud. "[T]he limitations period begins when the plaintiff suspects, or should suspect, that she has been wronged." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1114.) Here, the Hawkinses allege in their complaint that they became aware of the Donnelly report in 1995. The statute of limitations on any fraud claim has long expired.

Similarly, any conspiracy claim also fails. The limitations period on a conspiracy claim is determined by the nature of the underlying civil wrong the defendants allegedly conspired to perpetrate. (*Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 786.) Once the substantive offense which is the object of the conspiracy has been completed, " 'the statute of limitations on the conspiracy commences running, and subsequent conduct related to the conspiracy, such as flight or concealment, does not constitute "overt acts" sufficient to recommence the statutory period.' " (*State of Cal. ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 419.) Here, the Hawkinses' claim is based on the concealment or mishandling of the Donnelly report in 1995. Their claim is barred as it was not filed within three years of their discovery of the fraud, concealment, or mishandling.

B. The Court Lacks Subject Matter Jurisdiction Over Hawkins' Work-related Injuries

To the extent the Hawkinses' complaint alleges claims based on injuries Hawkins sustained during his employment, the superior court lacked jurisdiction to review issues arising out of the workers' compensation proceedings. The WCAB "has exclusive jurisdiction over disputes regarding an employee's right to compensation or the liability of an employer." (*Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal.3d 1, 5-6; Lab. Code, § 5300, subds. (a) & (b).)

C. Judge Chapla's Absolute Immunity Bars Any of the Hawkinses' Claims

The Hawkinses claim that Judge Chapla was biased and uncooperative with them in the proceedings before the WCAB. These claims are barred. It is well settled that judges are absolutely immune from individual liability for their judicial acts. (*Stump v. Sparkman* (1978) 435 U.S. 349, 355-356.) "It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His 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." (*Pierson v. Ray* (1967) 386 U.S. 547, 554.)

D. The WCAB Is Immune Under Government Code Section 815.2

The Hawkinses' claims against the WCAB that it destroyed records also fail. Government Code section 815, subdivision (a) provides that except as provided by statute, "[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." WCAB's governmental immunity bars the Hawkinses' claims here.

E. The Litigation Privilege Bars the Claims Against Hanna, Brophy

The Hawkinses' claims against Hanna, Brophy and its attorneys, Foley and Lehmer, appear to be based on written communications they made in connection with their representation of Levitz's workers' compensation insurer, Travelers, in the workers' compensation proceedings. These claims are barred by the litigation privilege. Civil Code section 47, subdivision (b) provides absolute immunity for publications made in a judicial proceeding or quasi-judicial proceeding. (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 912-913.) The privilege is absolute and applies to communications made in workers' compensation proceedings. (*Harris v. King* (1998) 60 Cal.App.4th 1185, 1187.) The litigation privilege bars the Hawkinses' claims here.

F. The Court Properly Declared Hawkins to Be a Vexatious Litigant

Hawkins's claim that the court erred in declaring him to be a vexatious litigant is without merit. Hawkins meets the requirements of a vexatious litigant as defined in Code of Civil Procedure section 391. A vexatious litigant is defined as one who has "[i]n the

immediately preceding seven-year period . . . commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." (*Id.*, § 391, subd. (b)(1).) Litigation includes appeals and writ petitions filed in the appellate courts. (*In re R.H.* (2009) 170 Cal.App.4th 678, 691, 692.)

Hawkins has litigated his work-related injuries and claims not only before the WCAB, but against defendants in the superior court, and has sought review of the WCAB and superior court proceedings before both the Court of Appeal and the California Supreme Court. All of these proceedings were "finally determined adversely" to him. (See, e.g., *Hawkins v. Workers' Comp. Appeals Board* (Apr. 10, 2003, A101781) [petn. for writ of review den.]; *Hawkins v. Workers' Comp. Appeals Board* (Oct. 26, 2006, A115191) [same]; *Hawkins v. Workers' Comp. Appeals Board* (Dec. 13, 2006, S147814) [petn. for review den.]; *Hawkins v. Workers' Comp. Appeals Board* (Jan. 9, 2008, A120165) [petn. for writ of mandate den.]; *Hawkins v. Workers' Comp. Appeals Board* (Mar. 12, 2008, S159985) [petn. for review den.]; *Hawkins v. Travelers Indemnity Co.* (Super. Ct. S.F. City and County, 2008, No. CGC08-477884) [dismissed for lack of subject matter jurisdiction on Oct. 28, 2008]; *Hawkins v. Superior Court* (Mar. 16, 2009, A124246) [petn. for writ of mandate den.].) Substantial evidence supports the court's ruling. The court properly designated Hawkins as a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivision (b)(1). (See *Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 781.)

III. DISPOSITION

The judgments are affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P.J.

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SEPULVEDA, J.