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NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 FIVE

JANICE WILSON,

Plaintiff and Appellant,

v. **A127847**

DEL NORTE COUNTY LOCAL AGENCY FORMATION COMMISSION et al., **(Del Norte County Super. Ct. No. CVPT081380)**

Defendants and Respondents;

DEPARTMENT OF FISH AND GAME et al.,

Interveners and Respondents.

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In August 2008, the Del Norte County Local Agency Formation Commission (LAFCO) dissolved the Pacific Shores Subdivision California Water District (the Water District). The Water District was formed at the behest of property owners in the Pacific Shores Subdivision (Subdivision) to obtain state and local approvals to construct water and sewer infrastructure to serve the Subdivision. Plaintiff Janice Wilson (plaintiff) owns property in the Subdivision. In March 2009, plaintiff filed a complaint against LAFCO and Del Norte County (the County). The operative complaint alleged a single cause of action for "violations of [the] California and U.S. Constitution" and sought, among other things, an order invalidating the dissolution. Maxine Curtis, another Subdivision

property owner, and the Northcoast Environmental Center intervened, along with the California Department of Fish and Game (collectively, interveners).

The interveners and the County demurred to the operative complaint, contending the court lacked jurisdiction because plaintiff failed to comply with the procedures for reverse validation actions set forth in Code of Civil Procedure sections 860 and 863.[1] The trial court sustained the demurrers without leave to amend and dismissed the lawsuit. The court determined plaintiff "failed to meet the rather simple and straight forward [*sic*] requirements" of filing the action within the 60-day statute of limitations and publishing the summons in accordance with section 861.

Plaintiff appeals. She contends her lawsuit is not barred by the 60-day statute of limitations set forth in sections 860 and 863 because she did not file a "reverse validation action" but rather a claim for violations of her federal civil rights pursuant to 42 United States Code section 1983 (Section 1983). In the alternative, she argues there was "good cause" to excuse her failure to publish the summons in accordance with section 861. She is wrong. We affirm.[2]

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[1] Unless otherwise noted, all further statutory references are to the Code of Civil Procedure. "Section 860 . . . provides that a public agency may test the legal validity of certain of its acts by filing an in rem 'validation' action within 60 days. Under section 863, interested parties may also, within the same 60 days, file a 'reverse validation' action to challenge the validity of those acts. [Citations.]" (*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 960 (*Robings*).) In addition, Government Code section 56103 provides, "An action to determine the validity of any change of organization, reorganization, or sphere of influence determination completed pursuant to this division shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure."

[2] Colin P. Wedel of the Mills Legal Clinic at Stanford Law School filed a brief on behalf of interveners Northcoast Environmental Center and Maxine Curtis. However, Wedel's supervising attorney failed to ensure he obtained a certificate of registration as a certified law student from the State Bar (Cal. Rules of Court, rule 9.42(a)(1)) and permission of this court to appear and argue at oral argument. (Cal. Rules of Court, rule 9.40(d)(3).) The certified law student's supervising attorney should ensure that these requirements are satisfied before permitting a student to file a brief and argue before this court. (Cal. Rules of Court, rule 9.42(a)(2); 1 Witkin, Cal. Proc. (5th ed. 2008)

FACTUAL AND PROCEDURAL BACKGROUND

The Water District

In 1963, the County approved the 1,486-acre Subdivision located on a dune formation adjacent to Lake Earl, the largest estuarine coastal lagoon in the western continental United States. The Subdivision is surrounded by a wildlife refuge and a state park. The County built roads and installed an electric transmission line within the Subdivision. With the exception of one residence built before 1972, however, there have been no further infrastructure improvements to the Subdivision in the last 45 years, partly due to various environmental and legal impediments such as the Clean Water Act (33 U.S.C. § 1251 et seq.) and the California Coastal Act of 1976 (Pub. Resources Code, § 30000, et seq.) In a sense, the Subdivision exists on paper only.

In 1987, the Pacific Shores Owners Association petitioned LAFCO, a government agency, to create the Water District.[3] (See Gov. Code, § 56000, et seq.) The District was formed for the explicit "purpose[ ] of providing water supply and distribution and sewage treatment and disposal" to the Subdivision. Plaintiff is a voting member of the District. The Water District assessed all property owners within the Subdivision — including intervener Curtis — an annual special tax of between $125 and $150.

The District spent several hundred thousand dollars to prepare environmental studies — including $226,800 to produce an Administrative Draft Environmental Impact

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Attorneys, § 384, p. 495.) The court will expect and require the Mills Legal Clinic of Stanford Law School to comply with the California Rules of Court that govern the use of certified law students. Our criticism of the Clinic's mentoring is not intended as a criticism of the brief filed on behalf of Northcoast Environmental Center or Curtis, or Wedel's advocacy.

[3] "LAFCO is an acronym for 'Local Agency Formation Commission.' It is a statewide agency responsible for reviewing jurisdictional changes in city boundaries." (*Tracy Joint Unified School Dist. v. Pombo* (2010) 189 Cal.App.4th 889, 900, fn. 4.) "'"The overarching goal of LAFCOs is to encourage the orderly formation and extension of government agencies, while balancing the competing needs in California for affordable housing, economic opportunities, and the preservation of natural resources."' [Citation.]" (*Hofman Ranch v. Yuba County Local Agency Formation Com.* (2009) 172 Cal.App.4th 805, 810.)

Report — to obtain approval to build water and sewage facilities in the Subdivision. The County, however, determined the Administrative Draft Environmental Impact Report was "seriously deficient because it did not comply with the California Environmental Quality Act, lacked objectivity, failed to consider either mitigation of the significant effects of the project or alternatives to the project, and did not at all discuss the water and sewage systems that would be an integral part of any development project on the property." The District then began using taxpayer funds — as much as 85 percent of its annual budget — to bring lawsuits against state and federal agencies and against various governmental officials. These lawsuits, which sought development permits, were unsuccessful.

The LAFCO Proceedings

In 2006, the County petitioned LAFCO to dissolve the Water District. After a lengthy investigation, LAFCO recommended granting the petition because "development in the Subdivision is subject to numerous environmental and financial constraints, and it is highly unlikely that the Water District or any successor agency will ever obtain the requisite approvals for a development project unless a massive overhaul in the law is to occur, and/or a rapid change in technology happens, and/or the District comes up with an unknown viable method to deliver services that it has yet to disclose." In December 2007, LAFCO voted to dissolve the Water District. On August 25, 2008, LAFCO adopted a resolution affirming its dissolution of the Water District and directing staff to prepare a "certificate of completion" formalizing the decision and triggering the 60-day statute of limitations on any validation challenge.

The Litigation

In an attempt to enjoin LAFCO from filing the certificate of completion, the Water District filed an application for a temporary restraining order (TRO) on August 26, 2008. The court denied the application for failure to comply with applicable notice requirements. That same day, the Water District also filed a "petition and complaint" seeking declaratory, injunctive, and validation relief.

A few days later, on August 29, 2008, the Water District filed a second TRO application seeking to enjoin the filing of the certificate of completion. That same day,

LAFCO recorded the certificate of completion dissolving the Water District. From that point forward, the Water District was "dissolved, disincorporated, and extinguished" and lacked the legal capacity to sue. (Gov. Code, § 57450 ["[o]n and after the effective date of the dissolution of a district, the district shall be dissolved, disincorporated, and extinguished, its existence shall be terminated, and all of its corporate powers shall cease . . ."].) Also on August 29, 2008, the court denied the Water District's second TRO for failure to comply with notice requirements. In a letter dated September 9, 2008, the County reminded the Water District that it had been dissolved and directed the Water District to "advise all employees, contractors, and attorneys purported[ly] engaged by the [Water D]istrict that the legal existence of the [Water D]istrict has been terminated . . . ."

On September 29, 2008, the Water District filed a "First Amended Petition and Complaint for Writ of Mandate." The first amended complaint sought validation relief but added a cause of action for "violations of [the] California and U.S. Constitution" alleging that the dissolution had "hobbled" the Water District's "development efforts[.]" Along with the first amended complaint, the Water District filed a third TRO application, claiming the recording of the certificate of completion was improper. The court issued a TRO prohibiting LAFCO or the County from filing a further certificate of completion, but dissolved the TRO the next day.

On March 18, 2009, the Water District filed a "Second Amended Petition and Complaint for Writ of Mandate" purporting to substitute Wilson as the plaintiff and eliminating the reference to section 860 in the caption. The second amended complaint alleged six causes of action, including a claim that LAFCO and the County violated plaintiff's right of access to the courts in violation of the state and federal Constitutions. The second amended complaint, however, did not allege a reverse validation claim. Sometime shortly thereafter, the interveners learned that plaintiff had filed the second amended complaint. They moved to intervene on the side of LAFCO and the County. The court granted the motions and allowed the California Department of Fish and Game, Northcoast Environmental Center, and Curtis to intervene.

On August 5, 2009, plaintiff filed a third amended complaint alleging a single cause of action alleging a deprivation of her "First Amendment Right to Access the Courts." Specifically, the operative complaint alleged the dissolution process "failed to comport with the legal requirements for dissolving a California water district" and that LAFCO and the County: (1) "fail[ed] to notify the [Water] District members of dissolution proceedings;" (2) "fail[ed] to provide the proper forms to allow [the Water] District members to protest the dissolution;" (3) "misrepresent[ed] and otherwise fraudulently fail[ed] to disclose all protests;" (4) "fail[ed] to count all protests, los[t] some, [and found] others, making any total [*sic*] invalid;" (5) started and stopped the "protest process, misleading protestors;" and (6) "[i]mproperly continu[ed] to tax or collect funds from Subdivision owners."

The third amended complaint also alleged the dissolution "was brought by the County in retaliation" for being sued by the Water District and was intended to deprive plaintiff and the Water District "of their constitutional access to the courts for redress by and through their right of association." The operative complaint, however, did not reference Section 1983 or seek relief pursuant to that statute. Instead, the operative complaint sought a writ setting aside the LAFCO decision.

The interveners and the County demurred. Among other things, the interveners argued that all judicial challenges to LAFCO's decision to dissolve the Water District must be pursued in a validation action and that plaintiff had failed to comply with the statutory validation procedures, specifically the 60-day statute of limitations set forth in section 860.

Following a hearing, the court sustained the demurrers without leave to amend. The court rejected plaintiff's claim that section 860's 60-day statute of limitations did not apply because of the "alleged constitutional issues she claims are involved." The court concluded plaintiff's lawsuit did not involve Section 1983 and that "any issue that might be asserted in a validation action, including constitutional challenges, must be raised within the statutory 60 day limitations period set forth in [section] 860." Finally, the court determined that "[n]o matter how this case may be characterized . . . all agree that

any challenge to the final order of LAFCO must be in the form of a validation action pursuant to Government Code [s]ection 56103. It is also very clear that plaintiff has failed to meet the rather simple and straightforward requirements[:] filing of the action within 60 days of the issuance of the order and publication of summons. Under these circumstances, the complaint fails, on its face, to state a cause of action and the demurrers must be sustained and the case dismissed without leave to amend."

DISCUSSION

"A demurrer tests the legal sufficiency of the complaint. . . ." (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497 (*Hernandez*).) Following the lower court's sustaining of a demurrer without leave to amend, we examine the complaint and the demurrer de novo "to determine whether [the complaint] alleges facts sufficient to state a cause of action under any legal theory. . . ." (See *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) In doing so, "we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Adelman v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) "[W]here the demurrer is sustained without leave to amend, [we] determine whether the trial court abused its discretion in doing so. [Citations.] . . . [W]e will only reverse for abuse of discretion if we determine there is a reasonable possibility the pleading can be cured by amendment. Otherwise, the trial court's decision will be affirmed for lack of abuse. [Citations.]" (*Hernandez, supra,* at pp. 1497-1498.)

The dissolution of the Water District is a "change of organization." (Gov. Code, § 56021, subd. (e) ["[c]hange of organization" includes "a district dissolution"]). Any judicial "action to determine the validity of any change of organization . . . shall be brought pursuant to" the validation statutes set forth in section 860 to 870. (Gov. Code, § 56103; § 860, et seq.; *Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 466-469 (*Hills for Everyone*) [writ of mandate could not be used to challenge a completed annexation]; *Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646, 656).) The validation statutes "'provide a simple and uniform method for testing the validity of government action'" and "'assure[ ] due process notice to all interested

persons and settle[ ] the validity of the annexation once and for all by a single lawsuit.'" (*Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 789-790 (*Embarcadero*), internal citations omitted.)

An "interested person" who seeks to challenge the validity of a LAFCO decision dissolving a district must bring a "reverse validation action" within 60 days of the disputed decision. (§§ 860, 863; *Robings, supra* 188 Cal.App.4th at p. 960; *Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1028 (*Katz*).) "'[U]nless an "interested person" brings an action of his own under section 863 within the 60-day period, the agency's action is "immune from attack whether it is legally valid or not."'" (*California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420 (*California Commerce*), quoting *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341-342 (*City of Ontario*).) Courts enforce this relatively short statute of limitations because it "further[s] the important policy of speedy determination of the public agency's action." (*Embarcadero, supra*, 88 Cal.App.4th at p. 790; *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1166.)

Plaintiff filed the operative complaint in March 2009, well after the statute of limitations period for challenging the dissolution of the Water District expired.[4] She may not now attempt to avoid the 60-day statute of limitations applicable to validation and reverse validation claims by artfully pleading an alleged constitutional violation. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 846-847 (*Friedland*);

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[4] Plaintiff claims "the action for constitutional violations was filed [on] September 29, 2008 — thus within any 60-day statute of limitations from the . . . LAFCO dissolution action. [She] substituted in for the Water District after it was dissolved, but the original action had been timely filed." We disagree. The first amended complaint was a legal nullity because the Water District lacked the legal capacity to sue after it had been dissolved. (Gov. Code, § 57450.) In addition, when plaintiff filed the second amended complaint, she dropped the reverse validation claims asserted by the Water District in the original and first amended complaints. Moreover, plaintiff has failed to support her contention with any authority or with citations to the record. (See *Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460, 1480 [contentions "supported neither by argument nor by citation of authority are deemed . . . abandoned" and need not be considered by the reviewing court].)

California Commerce, supra, 146 Cal.App.4th at pp. 1430-1433 [alleged violations of California Constitution in connection with challenge to statutes regulating Indian gaming should have been raised in a reverse validation action]; *Broadmoor Police Protection Dist. v. San Mateo Local Agency Formation Com.* (1994) 26 Cal.App.4th 304; see also *Plunkett v. City of Lakewood* (1975) 44 Cal.App.3d 344, 347 [challengers cannot avoid validation procedure requirements "merely by adding allegations of fraud to their complaints"]; *Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416, 420 [reverse validation action challenging city ordinance asserted claims for relief "under several statutory and constitutional theories," including Section 1983].)

Friedland is on point. There, a nonprofit corporation issued revenue bonds to finance an aquarium project. (*Friedland, supra,* 62 Cal.App.4th at p. 838.) The project included pledges of funds by two public agencies as security for payment of the debt service on the bonds. (*Id.* at p. 840.) The public entities brought a validation action to, among other things, validate the pledges. (*Id.* at pp. 840-841.) After the trial court entered judgment on the validation action, the plaintiffs sued to invalidate the public agencies' actions, alleging a claim for declaratory relief and a taxpayer cause of action. (*Id.* at pp. 841, 845.)

The trial court sustained the defendants' demurrer without leave to amend and the plaintiffs appealed. (*Friedland, supra,* 62 Cal.App.4th at p. 839.) On appeal, the plaintiffs claimed the trial court erred by sustaining the demurrer without leave to amend because they were "not attempting to set aside the [v]alidation [a]ction" and because they could "raise a constitutional challenge to a public agency's act at any time." (*Id.* at pp. 845-846.) The appellate court rejected this argument and explained, "We hold that as to matters which have been or which could have been adjudicated in a validation action, such matters—including constitutional challenges—must be raised within the statutory limitations period in section 860 et seq. or they are waived." (*Friedland, supra,* at pp. 846-847.)

Hills for Everyone is also instructive. In that case, the petitioner filed a petition for writ of mandate to compel the Local Agency Formation Commission of Orange County to set aside its approval of a proposal to annex unincorporated territory in Orange County to the City of Yorba Linda and to enjoin the City from proceeding with the annexation. (*Hills for Everyone, supra,* 105 Cal.App.3d at p. 463.) The trial court granted the respondent's motion for summary judgment and the petitioner appealed. As in *Friedland*, the *Hills for Everyone* court rejected the petitioner's claim that it "was not required to proceed under the validating statute because the attack upon LAFCO's approval of the annexation proposal was based on CEQA violations." (*Hills for Everyone, supra,* at p. 467.) The court explained that "the only method of testing the validity of the annexation, *whatever the basis for the challenge*, was either an action in compliance with the validating statute or a quo warranto proceeding by the Attorney General." (*Ibid.*, italics added.)

The same is true here. The only way for plaintiff to challenge the dissolution of the Water District — whatever the basis for the challenge — was to file a reverse validation action within the 60-day statute of limitations. Plaintiff did not and, as a result, her challenge to the dissolution, including her constitutional claim, is barred. Plaintiff's contention that the dissolution of the Water District was an attempt to deprive her and the Water District's members of their constitutional access to the courts is "merely a request for invalidation of [the dissolution] stated in other words." (*Katz, supra,* 144 Cal.App.4th at p. 1034.) As a result, plaintiff's failure to comply with the 60-day statute of limitations in sections 860 and 863 is fatal to her claim. This is so because "matters which have been or which could have been adjudicated in a validation action, such matters—including constitutional challenges—must be raised within the statutory limitations period in section 860 et seq. or they are waived." (*Friedland, supra,* 62 Cal.App.4th at pp. 846-847.)

Plaintiff's argument to the contrary — that "the 60-day limitation imposed by [sections] and [ ] 863 is inapplicable when a plaintiff raises a question of deprivation of a fundamental constitutional right" — has no merit. The *Friedland* and *Hills for Everyone*

courts have rejected similar arguments. Moreover, plaintiff's reliance on a single case, *Summit Media LLC v. City of Los Angeles, CA* (C.D. Cal. 2008) 530 F.Supp.2d 1084 (*Summit Media*), to support her argument is misplaced. In *Summit Media*, the plaintiff sued the City of Los Angeles (City), raising several First Amendment challenges to a city law regulating outdoor advertising. The district court did not discuss the validation statutes, except to reject the City's argument that the plaintiff's facial challenge to the City's inspection program ordinance was barred by section 860 and section 863's 60-day statute of limitations. (*Summit Media, supra,* at p. 1090.) The court explained that "[t]he statute of limitations does not apply to the facial challenge of a statute that infringes First Amendment freedoms as such a statute inflicts a continuing harm." (*Ibid.*) For obvious reasons, *Summit Media* is completely distinguishable. In addition, we are not bound by decisions of lower federal courts. (See *Etcheverry v. Tri-Ag Service, Inc.* (2000) 22 Cal.4th 316, 320-321, overruled on another ground in *Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431, 437.)

The trial court properly sustained the demurrers without leave to amend for an additional reason: plaintiff failed to comply with sections 861 and 861.1, which set forth detailed requirements for publication of the summons to perfect jurisdiction in a validation or reverse validation action. (*Katz, supra,* 144 Cal.App.4th at p. 1032; see also *Coachella Valley Mosquito and Vector Control Dist. v. City of Indio* (2002) 101 Cal.App.4th 12, 18.) The summons in a validation or reverse validation action must be directed to "'all persons interested'" in the matter and must contain a detailed summary of the matter that the public agency or an interested person seeks to validate. (§ 861.1.) An interested person who files a reverse validation action must complete service by publication in a newspaper of general circulation and file a proof of publication within 60 days of the filing of the complaint, unless good cause excuses the failure to comply. (§§ 861, 863.) If an interested person fails to comply with this requirement and offers no showing of good cause excusing this failure, the court lacks jurisdiction to hear the matter and the action "shall be forthwith dismissed[.]" (§§ 862, 863; *Katz, supra,* 144 Cal.App.4th at p. 1032.) "Whether plaintiff demonstrated good cause for failing to

comply with the summons publication requirements . . . is a question that is committed to the sound discretion of the trial court." (*Katz, supra,* 144 Cal.App.4th at p. 1031.)

Plaintiff's failure to publish the summons in compliance with the statutes discussed above deprived the court of jurisdiction over her claim. We are not persuaded by plaintiff's reliance on *City of Ontario, supra,* 2 Cal.3d at page 341 to establish "good cause" for her failure to comply with the publication requirements. In *City of Ontario,* petitioners timely filed a taxpayer action regarding the construction of an automobile racing stadium and served the summons. Petitioners, however, did not follow the publication requirements set forth in sections 861, 861.1, and 862. (*City of Ontario, supra,* at p. 339.) The California Supreme Court determined there was "good cause" for petitioners' failure to publish the summons because the issue of whether the validation statues applied to the taxpayer action "'presented a complex and debatable'" problem and because counsel for petitioners honestly believed the validation statutes did not apply. (*Id.* at p. 345.) The court explained that the test governing a claim of good cause under section 863 "'may be equated to good reason for a party's failure to perform that specific requirement [of the statute] from which he seeks to be excused.' [Citation.] The rule is that 'a mistake as to the law does not require relief from default as a matter of law. [Citation.] The issue of which mistakes of law constitute excusable neglect presents a fact question; the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. [Citation.]'" (*Id.* at pp. 345-346.)

In contrast to *City of Ontario*, it is "not complex and debatable" whether the validation statutes apply to plaintiff's challenge to the dissolution of the Water District. As discussed above, the law is well settled. It was therefore unreasonable for plaintiff to believe she was not required to comply with the publication requirements. We conclude plaintiff has not demonstrated the court abused its discretion by concluding there was no good cause for her failure to publish the summons in accordance with sections 861 and 861.1.

DISPOSITION

The order sustaining the demurrers without leave to amend and dismissing plaintiff's action is affirmed. Respondents Del Norte Local Agency Formation Commission and Del Norte County, and interveners California Department of Fish and Game are awarded costs on appeal. Interveners Northcoast Environmental Center and Curtis shall bear their own costs.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.