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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PAULO NARANJO,

Plaintiff and Appellant,

v.

CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD et al.,

Defendant and Respondent;

W.S. YOUNG CONSULTING, INC.,

Real Party in Interest.

A128796

(San Francisco County
Super. Ct. No. 507369)

Plaintiff Paulo Naranjo purports to appeal from an order denying his motion to vacate a judgment. Because an order denying a motion to vacate is not appealable except under limited circumstances not present here, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Naranjo sought unemployment insurance benefits after he left his employer, W.S. Young Consulting, Inc. The Employment Development Department (EDD) initially determined that Naranjo was eligible for benefits, finding that he had “good cause for leaving work” because “the terms and conditions of employment were substantially modified.” The employer appealed. An administrative law judge reversed the EDD’s decision, finding that Naranjo had not acted “as a reasonable person would have acted under the same or similar circumstances who desired to be employed.” A panel of the Unemployment Insurance Appeals Board (Board) affirmed the decision of the administrative law judge. In its decision, the Board adopted the administrative law judge’s

fact statement with certain corrections and added, “The claimant had no justification for demanding to be made a partner of the employer and the employer’s refusal to accede to that demand did not supply the claimant with a compelling reason for leaving the job.” The Board rejected Naranjo’s claim that he had not received a fair hearing in the matter.

Naranjo filed a petition for writ of mandate in the Superior Court for the City and County of San Francisco challenging the Board’s decision. Naranjo named the Board as well as the EDD and the director of the EDD as respondents. On June 2, 2009, the trial court entered judgment denying the petition for writ of mandate. In its statement of decision denying the petition, the court found the Board acted properly, had jurisdiction over the appeal, and did not act in excess of its jurisdiction or commit any prejudicial abuse of discretion. Naranjo filed a notice of appeal on August 21, 2009. In an opinion filed November 25, 2009, this court dismissed Naranjo’s appeal from the judgment as untimely. (*Naranjo v. California Unemployment Insurance Appeals Board* (Nov. 25, 2009, A126281) [nonpub. opn.].)

On March 25, 2010, nearly 300 days after entry of the judgment denying his petition for writ of mandate, Naranjo filed a motion to vacate the judgment as void, citing the court’s inherent equitable powers and section 473 of the Code of Civil Procedure. In an order filed May 13, 2010, the trial court denied Naranjo’s motion to vacate the judgment. Naranjo filed an appeal from the order on June 2, 2010.

After the record on appeal was filed but before Naranjo filed his opening brief, respondents Board, EDD, and the director of the EDD (collectively, respondents) moved to dismiss the appeal, arguing that the appeal was taken from a nonappealable order. We denied the motion without prejudice and permitted respondents to raise the issue in their respondent’s brief.

DISCUSSION

Respondents contend the appeal should be dismissed because this court lacks jurisdiction to consider an appeal from the court’s order denying Naranjo’s motion to vacate. We agree.

Naranjo claims the appeal is authorized because it is from an order after judgment, citing section 904.1, subdivision (a)(2) of the Code of Civil Procedure. However, as our Supreme Court has stated, “not every postjudgment order that follows a final appealable judgment is appealable.” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651.) “To be appealable, a postjudgment order must satisfy two additional requirements.” (*Ibid.*, fn. omitted.) One such requirement “is that the issues raised by the appeal from the order must be different from those arising from an appeal from the judgment. [Citation.] ‘The reason for this general rule is that to allow the appeal from [an order raising the same issues as those raised by the judgment] would have the effect of allowing two appeals from the same ruling and might in some cases permit circumvention of the time limitations for appealing from the judgment.’ [Citation.]” (*Ibid.*)

Witkin observes that most orders denying motions to vacate judgments are *not* appealable: “The denial of a motion to vacate a prior judgment is an order after final judgment that affects the judgment and therefore can be appealable under certain special circumstances. [Citation.] However, these circumstances are rare, most of the orders are not appealable for compelling reasons: [¶] . . . If the prior judgment or order was appealable, and the grounds on which vacation is sought existed before entry of judgment, the correctness of the judgment should be reviewed on appeal from the judgment itself. To permit an appeal from the order refusing to vacate would give the aggrieved party two appeals from the same decision or, if the party failed to take a timely appeal from the judgment, an unwarranted extension of time starting from the subsequent order. [Citations.]” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal § 197, pp. 273-274; accord *Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576.)

Witkin describes four exceptions to the general rule that an order denying a motion to vacate is nonappealable. (9 Witkin, Cal. Procedure, *supra*, Appeal §§ 198-201, pp. 274-278.) Such an order may be appealable if (1) there is no effective appeal from the judgment, (2) the appellant was not an original party to the action, (3) the motion to vacate is authorized by statute, or (4) the motion seeks to vacate a void judgment. (*Ibid.*) As we explain, none of these exceptions applies here.

Naranjo had an avenue to appeal the judgment but failed to do so in a timely fashion. In addition, he was obviously a party to the action below. With regard to a statutory basis for his motion to vacate, we observe that Naranjo cited Code of Civil Procedure section 473 as one basis for his motion. Under that statute, a motion to vacate a judgment due to mistake, inadvertence, surprise, or excusable neglect must be made no later than six months after entry of the challenged judgment. (Code Civ. Proc., § 473, subd. (b).) Naranjo's motion was plainly untimely under subdivision (b) of Code of Civil Procedure section 473. However, subdivision (d) of Code of Civil Procedure section 473 allows a party to move at any time to "set aside any void judgment or order." Naranjo has attempted to frame his motion so as to characterize the judgment as void.

A judgment is not void simply because a trial court commits legal error. Rather, "[a] judgment is void if the court rendering it lacked subject matter jurisdiction or jurisdiction over the parties. Subject matter jurisdiction 'relates to the inherent authority of the court involved to deal with the case or matter before it.' [Citation.] Lack of jurisdiction in this 'fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.]" (*Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 691.) "In a broader sense, lack of jurisdiction also exists when a court grants 'relief which [it] has no power to grant.' [Citations.]" (*Ibid.*)

In *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933, the court determined that an order denying a motion to vacate a judgment was appealable where the appellant asserted the judgment was void because she had not been personally served and the respondent committed extrinsic fraud by obtaining an order reflecting service by publication. In *Carlson v. Eassa, supra*, 54 Cal.App.4th at p. 696, the court held that an order denying a motion to vacate a judgment was appealable where the court lacked authority to enter a judgment based upon a purported stipulation to which both parties had not agreed. The court stated: "This is not merely a mistaken application of the law or a grant of excess relief, but a complete absence of power to accord relief, a judgment 'completely outside the scope of the court's jurisdiction to grant' [Citations.]" (*Ibid.*)

Despite Naranjo's best efforts to portray the judgment as void, his arguments amount to little more than claiming the trial court erred in denying his petition for writ of mandate. In his brief on appeal, he claims the judgment is "void" because (1) it gives effect to a void Board decision, (2) the court left material issues unresolved and failed to make required findings, (3) the judgment is not supported by the pleadings, (4) the court denied Naranjo due process because it failed to specify the facts and law supporting respondents' actions, (5) the court "erroneously divested itself of jurisdiction" because it ignored all arguments not directed at the Board's decision, and (6) the court granted relief it had no power to grant, purportedly because—as best we can understand Naranjo's contention—in affirming the denial of unemployment insurance benefits it relied on a statute that does not permit denial of benefits.

None of Naranjo's arguments on appeal turns on whether the trial court lacked fundamental jurisdiction to act or acted wholly outside the scope of its jurisdiction. Instead, the issues he tenders are ones that could have been raised on appeal from the judgment. To permit his appeal would effectively allow him to revive his untimely appeal of the judgment.

Further, it is immaterial that Naranjo couched his motion in terms of an attempt to vacate a void judgment under section 473, subdivision (d) of the Code of Civil Procedure. The label Naranjo attached to his motion is not determinative. (See *Forman v. Knapp Press* (1985) 173 Cal.App.3d 200, 202-203 [order denying motion to vacate not appealable simply because appellant incorrectly labeled it a statutory motion to vacate].) The motion did not rest on grounds that would render the judgment void but instead raised claims of error that could have been raised in a timely-filed appeal. Under the circumstances, the order denying Naranjo's motion to vacate falls squarely within the general rule that such orders are nonappealable.

As a final matter, we note that appellant has requested oral argument in response to a notice sent by the court's clerk, as a matter of course, when the appeal was fully briefed. A party's right to oral argument exists in any appeal considered on the merits and decided by written opinion. (See *Moles v. Regents of University of California* (1982) 32 Cal.3d

867, 871; accord *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1254.) Because we dismiss the appeal without reaching the merits, appellant does not have a right to oral argument, which we find to be unnecessary to our procedural dismissal of the appeal.

DISPOSITION

The appeal is dismissed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.