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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

JAMES F. ROBINSON,  
Plaintiff and Appellant,

v.

SOLANO COUNTY et al.,  
Defendant and Respondent.

A126917

(Solano County  
Super. Ct. No. FCS020011)

James F. Robinson appeals from a judgment entered on a demurrer sustained to his second amended complaint without leave to amend. Robinson argues his allegations were sufficient to state a cause of action that county sheriff's deputies violated Civil Code section 52.1 when they entered his home and confiscated his shotgun. In any event, he says the court abused its discretion when it sustained the demurrer without granting him leave to amend. Because we agree with the trial court that Robinson's second amended complaint did not state a cause of action under Civil Code section 52.1 for the confiscation of his shotgun, and the court did not abuse its discretion when it sustained the demurrer without leave to amend, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

The events involved in this lawsuit arise out of an incident in December 1995, when Robinson shot two dogs who were attacking animals he raised on his property in rural Fairfield. When sheriff's deputies arrived at his property to investigate, Robinson went out to meet them and was unarmed. He was confronted by the deputies at gunpoint, handcuffed, and detained in a patrol car. He was later released and not charged with any

crime. Robinson claims that during his encounter with the sheriff's deputies, his shotgun was wrongfully taken from his home.

Robinson initially filed suit in federal court. That case concluded without resolution of Robinson's state law claims, and they were remanded to state court. (See *Robinson v. Solano County* (9th Cir. 2002) 278 F.3d 1007, 1016-1017 [deputies granted qualified immunity on claims brought under 42 U.S.C. § 1983].) A jury trial was held in superior court on Robinson's claims for assault and negligence. (*Robinson v. County of Solano* (June 26, 2007, A110880) [nonpub. opn.].) The jury returned a special verdict on the battery claim concluding that deputy sheriffs had not used unreasonable or excessive force on Robinson, but it could not reach a verdict on the negligence claim. On the basis of the verdict on the assault claim, the court directed a verdict for defendants on the negligence cause of action. Robinson moved unsuccessfully for a new trial on the negligence claim. Robinson's cause of action for violation of Civil Code section 52.1 had been stricken from the case before trial on the grounds that his tort claim was insufficient to encompass a section 52.1 cause of action. In an earlier appeal, we dismissed Robinson's challenge to the new trial ruling due to his failure to provide an adequate record and remanded the case for further proceedings on his cause of action brought pursuant to Civil Code section 52.1.

Robinson's Civil Code section 52.1 cause of action was based upon allegations that the defendants pointed a gun at him, wrongfully seized Robinson's shotgun, painfully handcuffed him and negligently trained and supervised sheriff's deputies. On remand, defendants moved for summary judgment, and in light of the prior jury verdict, the court granted summary adjudication on the claim that defendants violated Robinson's rights when they pointed a gun at him. The court also granted summary adjudication on the claims that Robinson was painfully handcuffed and sheriff's deputies were negligently trained and supervised on the basis that these allegations were the subject of an earlier successful motion for summary adjudication.

The only remaining allegation was based on the allegedly wrongful seizure of Robinson's shotgun. As to this allegation, the court elected to treat the motion for

summary judgment as a motion for judgment on the pleadings. The court concluded that: “The First Amended Complaint does not allege sufficient facts to state a claim for violation of Civil Code [section] 52.1 based on the alleged wrongful seizure of plaintiff’s shotgun. It alleges no facts indicating that defendants seized plaintiff’s shotgun to interfere or to attempt to interfere with plaintiff’s rights by threats, coercion, or intimidation. It does not even allege the circumstances of the seizure, or what rights of plaintiff were violated by the alleged seizure.” Robinson was granted leave to amend.

In his second amended complaint, Robinson alleged that: “Due to the actions of the defendants, Plaintiff suffered a wrongful search and seizure of his shotgun, which was aggravated by the wrongful entry into his home by the Defendants where his shotgun was wrongfully taken away (1-D). Cauwells was the first officer to pull his gun and point it [at] the Plaintiff’s head, and was the guiding force that led to the Plaintiff being painfully handcuffed, roughly detained in the police car, and culminating in the actions that resulted in the illegal search and seizure of Plaintiff’s shotgun without probable cause and in violation of state and federal law. The illegal search and seizure of the Plaintiff’s shotgun, and the related illegal interference with Plaintiff’s right to possess a gun and use it to protect his home and property, is the basis of this cause of action. [¶] This action by Cauwells interfered or attempted to interfere by threat, intimidation, and/or coercion with the exercise or enjoyment by the Plaintiff of rights secured by the Constitution and/or laws of the United States, and/or of the rights secured by the Constitution or laws of this state, pursuant to [Civil Code] [s]ection 52.1. Plaintiff suffered damages, based on proof.”

Defendants demurred. The trial court sustained the demurrer on the basis that “the second amended complaint does not allege facts sufficient to state a cause of action for violation of Civil Code [s]ection 52.1 against defendants [Cauwells] and the County. The complaint fails to allege any facts that indicate defendant [Cauwells] was involved in the seizure of plaintiff’s shotgun and therefore involved in any attempt to interfere with plaintiff’s rights by ‘threat, intimidation, or coercion’ based on the seizure of the shotgun. Plaintiff’s vague allegations that [Cauwells] was a ‘guiding force’ in actions that led to

the seizure of the shotgun are not sufficient.” Since the court had previously afforded Robinson an opportunity to correct the deficiencies in his complaint, the demurrer was sustained without leave to amend.

### **DISCUSSION**

“On appeal from a judgment after a demurrer is sustained without leave to amend, we review the trial court’s ruling de novo, exercising our independent judgment on whether the complaint states a cause of action.” (*Lincoln Property Co., N.C., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 911.) We “must assume the truth of the complaint’s properly pleaded or implied factual allegations. [Citation.] . . . In addition, we give the complaint a reasonable interpretation, and read it in context. [Citation.] If the trial court has sustained the demurrer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect.” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Civil Code “section 52.1, subdivision (a), provides that if a person interferes, or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of the constitutional or statutory rights of ‘any individual or individuals,’ the Attorney General, or any district or city attorney, may bring a civil action for equitable or injunctive relief. Subdivision (b) allows ‘[a]ny individual’ so interfered with to sue for damages. Subdivision (g) states that an action brought under section 52.1 is ‘independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law’ . . . .” (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 841 [cause of action recognized under section 52.1 against a county and its sheriff for unreasonable search and seizure]; see also *Jones v. Kmart Corp.*

(1998) 17 Cal.4th 329, 334 [section 52.1 “require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion”].)

To state a cause of action under Civil Code section 52.1, a plaintiff must allege that the defendant, by threatening or committing a violent act, interfered or attempted to interfere with the plaintiff’s constitutional rights; that the plaintiff reasonably believed that if he exercised his constitutional rights the defendant would commit violence against him; that the defendant injured the plaintiff to prevent the exercise of a constitutional right or in retaliation for its exercise; that the plaintiff was harmed; and that the defendant’s conduct was a substantial factor in causing that harm. (*Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 882 [quoting CACI No. 3025].) No showing of discriminatory animus is required. (*Venegas v. County of Los Angeles*, *supra*, 32 Cal.4th at p. 841.)

In his second amended complaint, Robinson alleged that Cauwells was liable under Civil Code section 52.1 because he was “the guiding force [in the events] that . . . resulted in the illegal search and seizure of [Robinson’s] shotgun without probable cause and in violation of state and federal law.” In a summary fashion, he alleges these acts “interfered or attempted to interfere by threat, intimidation, and/or coercion with the exercise or enjoyment by [ Robinson] of rights secured by the Constitution and/or laws of the United States, and/or of the rights secured by the Constitution or laws of this state, pursuant to [Civil Code] section 52.1.” While we can infer that Robinson claims the action of the defendants interfered with his rights to be free from unreasonable search and seizure secured by the federal and state Constitutions, there is a complete failure by Robinson to allege what threats, intimidation, or coercion were employed to secure his abandonment or relinquishment of those rights.

The absence of any factual allegations that establish a nexus between the seizure of Robinson’s shotgun and threats, intimidation, or coercion by the defendants is fatal to his second amended complaint. In the context of Robinson’s second amended complaint, the shotgun was taken from his home while he was handcuffed and in the back of a patrol car. There is no allegation that the deputies said or did anything to force Robinson to

yield to their search and entry into his home.<sup>1</sup> There is simply no basis to conclude from the factual allegations of Robinson’s complaint that his shotgun was taken as a result of threatened violence or coercion.

As explained in *Austin B. v. Escondido Union School Dist.*, *supra*, 149 Cal.App.4th at page 882: “ ‘The Legislature enacted [Civil Code] section 52.1 to stem a tide of hate crimes.’ [Citation.] Civil Code section 52.1 requires ‘an attempted or completed act of interference with a legal right, accompanied by a form of coercion.’ [Citation.] To obtain relief under Civil Code section 52.1, a plaintiff need not allege the defendant acted with discriminatory animus or intent; a defendant is liable if he or she interfered with the plaintiff’s constitutional rights by the requisite threats, intimidation, or coercion.” The court correctly sustained the demurrer to the second amended complaint in light of the absence of any factual allegation of a threat, intimidation, or coercion in connection with the entry and search of Robinson’s home.

Nonetheless, Robinson argues it was error for the court to sustain the demurrer without leave to amend. Again, we disagree. Robinson says that had he been granted leave, he “would have amended the complaint to state that Cauwells was not only the ‘guiding force’ that resulted in the illegal search of Plaintiff’s home and the illegal seizure of his shotgun, but that if it had not been for the acts of Cauwells in furtherance of this wrongful search and seizure, said illegal acts would not have occurred. Cauwells was the ostensible leader at the scene. This illegal search of Plaintiff’s home and seizure of Plaintiff’s shotgun was the culminating act of Cauwells’ course of conduct . . . directed towards Plaintiff that resulted in threats, intimidation[,] or coercion.” Notably absent from this explanation are the threats and acts of intimidation or coercion that Robinson would plead caused his relinquishment of a constitutional right to deny entry into his home and confiscation of his gun. We express no opinion on whether or not the search of Robinson’s home and seizure of his shotgun were constitutional. Our decision turns

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<sup>1</sup> Robinson’s wife was home at the time, but she is not a party to this action and there is no allegation that defendants threatened, intimidated, or coerced her into allowing them to enter Robinson’s home.

instead on Robinson's inability after three opportunities to plead the acts of threat, intimidation, or coercion that led to his acquiescence in the search and seizure.

When the trial court afforded Robinson the opportunity to file his second amended complaint, his action had been pending for more than six years and some of his allegations had been tried to a jury. The trial court told him that his claim under Civil Code section 52.1 in the first amended complaint "alleges no facts indicating that defendants seized plaintiff's shotgun to interfere or to attempt to interfere with plaintiff's rights by threats, coercion, or intimidation. It does not even allege the circumstances of the seizure, or what rights of plaintiff were violated by the alleged seizure." His second amended complaint failed to cure these defects and his explanation to this court of the ways he would amend his allegations does no better.

In light of this record, we cannot conclude the trial court abused its discretion when it sustained the demurrer to Robinson's second amended complaint without leave to amend.

### **DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Pollak, J.