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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JACQUELYNE EVERIDGE,

Plaintiff and Appellant,

v.

ALTA BATES SUMMIT MEDICAL
CENTER, INC., et al.,

Defendants and Respondents.

A127931

(Alameda County
Super. Ct. No. RG06301460)

The trial court granted summary judgment in favor of respondents Alta Bates Summit Medical Center, Inc. (Alta Bates), and others on appellant Jacquelyne Everidge's wrongful termination action. (Code Civ. Proc.,¹ § 473, subd. (c).) Everidge's motions for reconsideration and to vacate entry of judgment were denied. (§ 473, subds. (b), (d), 1008, subd. (a).) She appeals,² claiming that the entry of judgment was void because it denied her an opportunity to move for reconsideration. We affirm the judgment.

I. FACTS

In October 2004, Everidge was hired by Alta Bates as a laboratory assistant. After receiving several disciplinary warnings, Everidge filed a complaint in June 2006 with the United States Equal Employment Opportunity Commission, claiming these disciplinary

¹ All subsequent statutory references are to the Code of Civil Procedure.

² Everidge filed a timely amended notice of appeal from the order denying her motion to vacate a void judgment. An order made after an appealable judgment is appealable. (§ 904.1, subd. (a)(2); see *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 690-692.)

warnings were racially based. After further reports of work errors, Alta Bates terminated Everidge's employment in August 2006. Everidge filed a retaliation complaint with the California Department of Fair Employment and Housing before filing a wrongful termination action in December 2006.³

Alta Bates moved for summary judgment, arguing that valid reasons for termination existed and that Everidge's termination was not motivated by race. On July 9, 2009,⁴ the trial court granted summary judgment, finding no evidence of discrimination. The trial court entered judgment dismissing the action on July 15. Alta Bates served Everidge with notice of entry of judgment on July 20.

Also on July 20, Everidge filed a motion for reconsideration of the order granting summary judgment in the trial court. On October 13, the trial court issued a tentative ruling denying the motion for reconsideration. Everidge did not contest the tentative ruling, which the trial court later affirmed, concluding that the July 15 entry of judgment deprived it of jurisdiction to hear the later filed motion for reconsideration. The trial court also found that even if it had jurisdiction, it would have denied the motion on the merits, as Everidge failed to present any new facts, circumstances or legal arguments in support of the motion.

Meanwhile, on October 9, Everidge moved to vacate the trial court's July 15 entry of judgment on voidness grounds. On January 4, 2010, the trial court denied this motion as well. It found no legal authority supporting her claim that the judgment was void, or that the court had erred by entering judgment before Everidge filed her motion for reconsideration of the underlying order.

³ Everidge brought this action against Alta Bates and her supervisors, respondents Dorothy Mattingly and Janet Williams-Martinez. She alleged causes of action for racial discrimination, harassment, retaliation, failure to take all reasonable steps to prevent discrimination, failure to maintain environment free from harassment, invasion of privacy, wrongful termination in violation of public policy, wrongful suspension in violation of public policy, and intentional infliction of emotional distress.

⁴ All subsequent dates refer to the 2009 calendar year unless otherwise indicated.

II. MOTION TO VACATE JUDGMENT

A. *Relief Under Section 473, Subdivision (d)*

1. *Contention on Appeal*

On appeal, Everidge contends the trial court erred by denying her motion to vacate a void judgment, for two reasons. First, she argues that relief was appropriate under section 473, subdivision (d), because the July 15 entry of judgment denied her an opportunity for a hearing on her motion for reconsideration in violation of her due process rights. The trial court concluded it was not required to wait 10 days after granting summary judgment before entering judgment.

2. *Standard of Review*

A trial court may set aside any void judgment or order. (§ 473, subd. (d).) A judgment is void as a matter of law if the judgment was issued in violation of a party's due process rights to notice and an opportunity to be heard. (*Brown v. Williams* (2000) 78 Cal.App.4th 182, 186-187, fn. 4.) Although a trial court has discretion to set aside a void judgment, on appeal, we make a de novo determination whether or not the judgment was void. (See *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 496.)

3. *Violation of Due Process*

Everidge argues that because she filed a timely motion for reconsideration,⁵ she had a due process right to have her motion heard by the trial court. (§ 1008, subd. (a).) She contends that the language of section 1008 implies that the trial court must wait until the 10-day period for filing a motion for reconsideration expires before entering a valid judgment. She reasons that if the failure to wait precludes her motion for reconsideration, it violates due process, making the entry of judgment void as a matter of law.

⁵ Subdivision (a) of section 1008 allows parties 10 days after written notice of entry of an order to file a motion for reconsideration of that order. (§ 1008, subd. (a).) Everidge received notice of the entry of order granting summary judgment on July 9, and her motion for reconsideration was filed on July 20. As the tenth day for filing a motion for reconsideration fell on a Sunday, the time period for filing was extended to the next court day. (See §§ 12-12b.)

When a party seeks to revoke a prior order, a motion for reconsideration must be filed within 10 days after service of the order of which reconsideration is sought. (§ 1008, subd. (a).) The motion must be based on different facts, circumstances, or law, and must be supported by an affidavit setting forth the grounds for reconsideration. (*Ibid.*) Entry of judgment divests a trial court of authority to rule on a motion for reconsideration of that judgment. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482 (*Safeco*); *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1237-1238.) If a timely motion for reconsideration is pending at the time a judgment is presented for entry, the trial court should not enter that judgment, unless it intends by doing so to impliedly deny the motion for reconsideration. (*Safeco, supra*, 134 Cal.App.4th at p. 1483.)

Everidge's motion for reconsideration of the judgment was not pending at the time of entry of judgment. Nothing in section 1008, subdivision (a), requires the trial court to delay entry of judgment to allow 10 days for filing a motion for reconsideration. (See § 1008, subd. (a).) To interpret the statute as Everidge suggests would compel us to rewrite the statutory language, which we may not do. (*Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 187.) Once the trial court filed entry of judgment, Everidge was no longer able to challenge the underlying summary judgment ruling by means of a motion for reconsideration.

Even if the trial court had jurisdiction to consider the motion, Everidge's motion still would have been denied, as the trial court denied the motion on the merits, as well as for lack of jurisdiction. It is clear to us that her motion *was* heard by that court, negating any due process claim. On the merits, Everidge's motion and its supporting declaration failed to provide new facts, circumstances, or legal authority warranting reconsideration. Under section 473, subdivision (d), Everidge's motion for reconsideration was properly denied.

B. Relief Under Section 473, Subdivision (b)

1. Discretionary Relief

Everidge also argues that the trial court should have granted her motion to vacate a void judgment under the authority of section 473, subdivision (b). Relief under this provision can be mandatory or discretionary, depending on the circumstances. (See § 473, subd. (b).) Everidge argues relief should have been granted under both the mandatory and discretionary aspects of this subdivision.

She argues that the trial court had discretion to vacate the void judgment under subdivision (b) of section 473 because it committed an excusable mistake. On appeal, Everidge bears the burden of proving that the trial court abused its discretion in denying the motion to vacate a void judgment. (See *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*); *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904.) This claim of error is based on her underlying assertion that entry of judgment before the 10-day period for filing a motion for reconsideration made the judgment void. As we have already rejected this assertion, she cannot meet her burden of proof. The trial court did not abuse its discretion in denying the motion for reconsideration.

2. Mandatory Relief

Finally, Everidge argues that the trial court had a mandatory duty to grant relief under section 473, subdivision (b). She reasons that the entry of judgment in this matter is analogous to a default judgment because it has the same force and effect as any civil judgment. This mandatory relief provision is a narrow one that applies to default judgments and dismissals. (*Zamora, supra*, 28 Cal.4th at p. 257; *Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 226 (*Henderson*).) As the underlying judgment was not a default judgment, this provision does not apply to the case before us.

This provision is inapplicable for a second reason. Good cause for relief under this provision must be based on an affidavit showing an *attorney's* mistake, inadvertence, surprise, or neglect. (§ 473, subd. (b).) This requirement is consistent with the purpose of this provision—to alleviate any hardship on parties who lose their day in court due solely to the inexcusable failure to act on the part of their attorneys. (*Zamora, supra*,

28 Cal.4th at p. 257; *Henderson, supra*, 187 Cal.App.4th at p. 226.) No attorney error was asserted by Everidge, who claimed that the *trial court* made the mistake. For this additional reason, this statute does not apply. The trial court properly denied Everidge's motion to vacate the judgment.

The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Rivera, J.