

Filed 12/12/12 Finding of Wells CA2/2
Subsequent opinion declaring litigant vexatious

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re FINDING of

WILLIAM G. WELLS,

as a Vexatious Litigant.

B235019

(Los Angeles County
Super. Ct. No. BC313252)

William G. Wells, in pro. per., for Plaintiff and Appellant William G. Wells.

On March 30, 2011, William G. Wells (also known as W.G. Wells) was disbarred for misconduct occurring during his 10-year vendetta against a former employee. Among other wrongdoing, Wells violated the doctrine of res judicata by relitigating an issue that was determined against him. During the State Bar Court proceeding, Wells filed 144 unmeritorious motions and pleadings. Apart from the behavior that led to his disbarment, Wells maintained at least five litigations that were determined adversely to him in this appellate district. Based on his repeated acts of misconduct, we declare William G. Wells to be a vexatious litigant. (Code Civ. Proc., § 391 et seq.)

Judicial Notice

On September 17, 2012, the Court sent Wells an Order to Show Cause (OSC) why he should not be declared a vexatious litigant. Wells had the opportunity to respond in writing and at oral argument. The OSC indicates the Court's intent to take judicial notice of (1) Wells's State Bar disciplinary records; (2) the Supreme Court disbarment order; and (3) appellate cases in which Wells represented himself in propria persona. Judicial notice may be taken of the records of any court of this state. (Evid. Code, § 452, subd. (d).) In a vexatious litigant proceeding, the court considers evidence material to its determination. (Code Civ. Proc., § 391.2; *In re Kinney* (2011) 201 Cal.App.4th 951, 954, fn. 3.) All of the judicially noticed matters are relevant to the present proceeding. (Evid. Code, § 459; *In re Kinney, supra*, 201 Cal.App.4th at p. 954, fn. 3; Cal. Rules of Court, Rule 8.1115 (b).)

With regard to Wells's State Bar records, we have obtained certified copies of the notice of disciplinary charges; the decision of the hearing judge filed October 27, 2009 (the Decision); and the opinion and order of the State Bar Court Review Department filed November 9, 2010 (State Bar Opn.). (Case Nos. 98-O-03727, 02-O-14682. See *People v. Vigil* (2008) 169 Cal.App.4th 8, 12, fn. 2 [taking judicial notice of State Bar records].) We also have a certified copy of the Supreme Court order in *In re William G. Wells on Discipline* (Mar. 30, 2011) S188974. Wells objects to the State Bar Court opinion, which he refers to as "a summary of [] falsehoods, lies and fabrications."

The State Bar functions as an arm of the Supreme Court in attorney discipline matters. The administrative power it exercises is “alternative and cumulative” to the Supreme Court’s authority to conduct disciplinary hearings. (*Jacobs v. State Bar* (1977) 20 Cal.3d 191, 196, 198; *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 563-564.) The State Bar makes recommendations to the Supreme Court, which “retains its inherent judicial authority to disbar or suspend attorneys.” (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 557-558; *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 600; Bus. & Prof. Code, § 6078.)

The State Bar Proceedings

The State Bar filed disciplinary charges against Wells after receiving a complaint from his former employee Barbara Dailey. A 23-day trial was held over the course of a year.¹ Wells was “evasive, hostile, and inconsistent and implausible” and refused to answer questions “even after being ordered to do so by the court.” (Decision, p. 2.) Wells was found culpable of repeatedly lying under oath; misappropriating money; failing to release Dailey’s legal files and render an accounting to her; and filing an unjust action against her. The judge recommended disbarment to protect the public, the courts and the legal community. (Decision, pp. 17-19, 23.)

On de novo review, the State Bar Court determined that Barbara Dailey owned commercial property in Corona. She acquired the property for a modest sum in 1976, as a retirement asset, at the urging of her employer, Mr. Wells, for whom she had worked as a secretary since the early 1960’s. Wells acted as her attorney in the transaction and managed the Corona property until 1998. (State Bar Opn., p. 3.)

Dailey became embroiled in litigation over the Corona property. In 1992, Wells sued a bank on Dailey’s behalf, claiming that she was “the sole owner” of the Corona property and testifying that he “never” had an ownership interest. Dailey was awarded

¹ Wells was represented by counsel during part of the disciplinary proceeding, then represented himself in propria persona when his attorney died during trial. (Decision, p. 2.)

\$88,029 in damages, but Wells never gave any portion of the award to Dailey. (State Bar Opn., pp. 5-7.) In 1995, Dailey was involved in litigation with Riverside County over the substandard condition of the Corona property: Wells filed a petition for writ of administrative mandate on Dailey's behalf, then failed to show up for trial, obliging her to pay the County \$19,475 in fees. Wells refused to relinquish the files in that case to Dailey's new attorney, even after the trial court ordered him to do so. (*Id.* at pp. 7-8.) In another dispute, Dailey was obliged to pay a tenant \$60,000 after Wells refused to release the tenant's security deposit from his trust account. (*Id.* at pp. 4-5.)

During litigation in 1997, Wells declared under penalty of perjury "I am not now nor have I ever been the owner of the [Corona] property." After Dailey engaged a new attorney, Wells took the opposite tack in the same case and claimed under penalty of perjury "Dailey did not purchase the Corona property, I did" In 1999, the trial court ruled that Dailey "is the 100% sole owner in fee simple of the [Corona] property . . . and that William G. Wells . . . [has] no right, title, interest, or estate, in the Corona Property." (State Bar Opn., pp. 8-9.)

After Dailey retained new counsel to represent her in all matters involving the Corona property, she directed Wells to deliver all of her files and documentation to the new attorney, and demanded an accounting of all rents, profits, losses and expenses. Wells refused, asserting that he owned the Corona property. This "contradicted Wells's prior statements under oath in various legal proceedings that Dailey had purchased the Corona property, that she was the sole owner of the property and that he had no ownership interest therein." (State Bar Opn., pp. 3-4, 5-6.)

Wells sued Dailey to quiet title, alleging that he is "the sole owner in fee simple title to the [Corona] property." Once again, the trial court ruled that Dailey is "the 100% sole owner in fee simple" and Wells has no right, title or interest in it. This lawsuit spawned four unmeritorious appeals from Wells. An opinion filed in March 2001 affirmed that Dailey was the sole owner and Wells has no right, title or interest in the property. (State Bar Opn., pp. 9-10.) Less than a month after the Court of Appeal decision was filed, Wells brought a new lawsuit against Dailey, challenging her

ownership of the Corona property. This lawsuit was brought in the name of Wells's wife. The trial court sustained Dailey's demurrer under the doctrine of res judicata. Wells appealed the decision and lost. (State Bar Opn., p. 10.)

The State Bar Court found that Wells repeatedly lied under oath about his ownership of the Corona property, about property taxes, and about who was entitled to rents from the property, all to secure an advantage. He misappropriated monies while acting as Dailey's attorney, refusing to release a \$60,000 security deposit or \$88,029 in litigation funds, and he violated court orders directing him to deliver Dailey's files to her new attorney. He failed to render an appropriate account of funds he held on her behalf. Wells filed an unjust action against Dailey in his wife's name after the Court of Appeal determined that he had no right to the Corona property. (State Bar Opn., pp. 11-16.)

Wells forced Dailey "to defend herself against his litigation vendetta"; he "displayed indifference toward rectification for his misconduct by failing to acknowledge any wrongdoing or refund any of the funds he misappropriated"; and he "displayed a lack of candor and cooperation throughout these proceedings." (State Bar Opn., pp. 18-19.) The court wrote, "Wells engaged in a ten-year vendetta against Dailey. He continues the same relentless tactics in this court, filing 144 motions, almost all of which were denied as unmeritorious." His conduct "'went beyond tenacity to truculence,'" and amounted to an abuse of process. The court recommended disbarment. (*Id.* at pp. 20-21.)

Wells brought a petition for review in the Supreme Court. On March 30, 2011, the Supreme Court denied Wells's petition and disbarred him from the practice of law. The court ordered Wells to make restitution to Dailey of \$148,000, plus interest. (*In re William G. Wells on Discipline, supra*, S188974.)

Adverse Appellate Litigation

1. Wells v. Ciotti (Feb. 3, 2006, B179092) (nonpub. opn.)

Wells appealed in propria persona from a postjudgment fee award. The parties' lease agreement provided for an award of fees and costs to the prevailing party, and defendant Richard Ciotti prevailed at trial. Wells lost his appeal: the trial court had jurisdiction to impose a fee award against Wells, and the amount was reasonable.

2. Wells v. Dailey (Oct. 3, 2006, B178577) (nonpub. opn.)

Wells appealed in propria persona from a judgment in favor of Barbara Dailey. This Court rejected Wells's challenges to the sufficiency of the evidence and to the denial of his motion for a new trial.

3. Wells v. Ciotti (Order and Opn. re sanctions filed Nov. 15, 2006, B184691)

While acting in propria persona, Wells misrepresented to this Court the date that the trial court was served with a statement of disqualification. We chastised Wells and denied him attorney fees and costs on appeal due to his misconduct. Wells filed a petition for rehearing containing new false statements. We issued an OSC re sanctions based on Wells's petition for rehearing. Reciting multiple examples of dishonesty, we found Wells's petition for rehearing frivolous, imposed sanctions of \$5,000 and reported him to the State Bar for making false statements of fact to a court.

4. Wells v. City National Bank (Dismissal Order filed Sep. 19, 2007, B200603)

Wells appealed in propria persona from a superior court order entered on June 5, 2007, directing the payment of funds to Barbara Dailey. On August 16, 2007, the Court issued an OSC directing Wells to show that the appeal was taken from an appealable order. Wells failed to respond to the OSC. His appeal was involuntarily dismissed.

5. Wells v. Americantex, Inc. (Oct. 29, 2012, B235019) (nonpub. opn.)

Wells appealed in propria persona from an order denying his postjudgment motion to strike Richard Ciotti's assignment of his judgment to a third party. This Court affirmed the trial court's ruling against Wells, noting that "Wells has pursued a pattern of dishonesty when he appears in court." (*Id.* at p. 5.)

DISCUSSION

"The purpose of the vexatious litigant statutes 'is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts.' (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 970-971; see *Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169; *Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 48; *First Western*

Development Corp. v. Superior Court (1989) 212 Cal.App.3d 860, 867-868.) ‘The constant suer . . . becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts. Arguably, one who has repeatedly relitigated groundless claims against one defendant could be required to give security before pressing to trial an apparently unfounded claim against a new victim.’ (*Taliaferro v. Hoogs* (1965) 237 Cal.App.2d 73, 74; see *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1505.)” (*In re Kinney, supra*, 201 Cal.App.4th at pp. 957-958.)

The vexatious litigant statutes do not apply solely to the trial courts. Each appellate petition and appeal constitutes “litigation.” (*McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, 1216; *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1170.) The critical finding is whether “the litigant’s actions are unreasonably impacting the objects of appellant’s actions and the courts as contemplated by the statute.” (*Morton v. Wagner, supra*, 156 Cal.App.4th at p. 971; *In re Kinney, supra*, 201 Cal.App.4th at p. 958.)²

Wells falls into multiple categories under the vexatious litigant statute. First, he filed at least five appeals or petitions that were decided adversely to him within the last seven years. Second, he repeatedly litigated a matter that was finally determined against him regarding his nonownership of the Corona property, as detailed in the State Bar Court opinion. Third, he filed innumerable unmeritorious motions and pleadings—some 144 of them—in the State Bar Court.

² A vexatious litigant is (1) someone who “has commenced, prosecuted, or maintained in propria persona at least five litigations” that were adversely determined to him or her in the last seven years; (2) someone who “repeatedly relitigates or attempts to relitigate, in propria persona” matters that have been finally determined against him or her; (3) someone who “while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers . . . or engages in other tactics that are frivolous or solely intended to cause unnecessary delay”; or (4) someone who has previously been declared a vexatious litigant in any state or federal court, based on the same or similar facts. (Code Civ. Proc., § 391, subd. (b).)

Wells's five adverse appellate rulings involve his two favorite targets: Richard Ciotti and Barbara Dailey. These two individuals—neither of them lawyers—were unfortunate enough to come into Wells's orbit and do business with him. Little did they know that Wells would later use his legal training to try to destroy them financially with repeated lawsuits and appeals. Wells's dispute with Ciotti began in 2001, and still it continues with the recent conclusion of yet another meritless appeal from Wells.

As detailed in the State Bar Court opinion, Wells's behavior toward his long-time employee Barbara Dailey was so egregious that it warranted disbarment. In multiple instances of dishonesty under oath, Wells declared that he never owned an interest in the Corona property, then claimed that he was the owner. The courts repeatedly ruled that Dailey is the 100 percent owner of the property, yet Wells obsessively continued to sue Dailey, in direct contravention of principles of *res judicata*.

Even after repeated trial court and appellate iterations that Dailey is the sole owner of the Corona property, Wells persists. In his latest filing, an opposition to the OSC re vexatious litigant status, Wells writes on page one, "Contrary to the State bar's assertion, Barbara Dailey [] did not buy the Corona property; I did." Although the Supreme Court rejected his claims, Wells is still bent on retrying the issue of ownership of the Corona property in this court, disparaging the Supreme Court's review as "cloaked in the façade of the rule of law and justice."

Not content to inflict misery on hapless individuals, Wells deployed his vexatious litigation tactics in the State Bar Court, filing 144 unmeritorious motions that the court described as truculent, not tenacious. Because Wells was disbarred in part for being a vexatious litigant with respect to Barbara Dailey and the Corona property, we have no difficulty in declaring him a vexatious litigant. Though he is no longer a lawyer, Wells's conduct unreasonably impacts the public and the courts. (*In re Kinney, supra*, 201 Cal.App.4th at p. 958.)

Wells argues that his business interests require him to be able to sue others. The courthouse doors are not closed to Wells, if he can establish a potentially meritorious claim. While baseless litigation is not constitutionally protected, the vexatious litigant

statutes allow litigation to proceed upon a proper showing that a proposed lawsuit or appeal has merit and was not filed for purposes of harassment or delay. (*Wolfe v. George* (9th Cir. 2007) 486 F.3d 1120, 1124-1125; Code Civ. Proc., § 391.7.)

For the reasons we have stated, William G. Wells (aka W.G. Wells) is a vexatious litigant. This opinion will serve as a prefiling order prohibiting Wells from filing any new litigation in the courts of this state without first obtaining leave of the presiding judge. (Code Civ. Proc., § 391.7, subd. (a).) Disobedience of this order will be punished as a contempt of court. (*Ibid*; *Shalant v. Girardi, supra*, 51 Cal.4th at p. 1170.) This applies to appeals and writ petitions, as well as to new litigation in the trial court. The clerk of this court is directed to provide a copy of this opinion and order to the Judicial Council. (Code Civ. Proc., § 391.7, subd. (f).)

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.