

ORAL ARGUMENT OUTLINE

INTRODUCTION

May it please the Court. My name is Jane Doe, and I am counsel for Respondent John Jones.

For more than two years, Mr. Jones has seen the Appellants use the state and federal court systems to harass him in an effort, apparently, to collaterally attack decisions made by the courts and social services regarding child custody. Appellants Janet Smith, Julie Smith, Joseph Smith, and attorney Ann Adams sued Jones, Jones's counsel, five state court judges, two district attorneys, two social workers, a therapist, the state department of justice, and the federal Internal Revenue Service for various phantom "wrongs." Jones filed this lawsuit to protect his own interests and seek redress for wrongs committed by Appellants against him, including defaming him in public documents, filing multiple malicious lawsuits, and abusing the court system.

In the trial court, Appellants have attempted to use the SLAPP statute to strike Mr. Jones's meritorius claims. The trial court properly denied the SLAPP motion, and this Court should affirm that decision. While the trial court's rationale, that the lawsuit did not involve a public issue, may not have been correct, the result was the right one. The trial court also properly overruled Appellants' demurrer because the First Amended Complaint did not involve a conspiracy between an attorney and her clients.

I. This Court should affirm the Superior Court’s decision in its entirety because Appellants’ SLAPP Motion and Demurrer under Civil Code section 1714.10 were not properly served.

- A. Appellants’ counsel is a party to this case. Under Code of Civil Procedure section 1013(a), parties cannot serve documents. It’s a very simple rule that all California lawyers should understand. But Adams repeatedly tried to serve documents herself and willfully, after being told not to do so by the trial court, failed to include signed proofs of service in documents, and claimed she did not even need to serve Jones’s counsel.
- B. The proofs of service accompanying the SLAPP Motion and the Demurrer were not signed, the printed information in the proofs of service indicated that service was to be made by Adams, a party to the lawsuit.
- C. The Superior Court previously struck Adams’s pleadings on this ground and said it could have done so here. recognized that it could have rejected all Appellants’ motions on this basis but chose not to do so.
- D. this Court may affirm on any grounds presented below, and Jones properly objected to the defective documents. The Superior Court’s orders should be affirmed based on the defective service.

II. The Superior Court also correctly concluded that Civil Code Section 1714.10, which applies to conspiracy claims involving an attorney and her client, did not apply here.

- A. Jones did not seek a court order before making his conspiracy claim against Adams, Julie Smith, and Joseph Smith.
- B. He didn’t need to because Jones’s conspiracy allegation does not involve a conspiracy between Adams and any of her clients, and the statute, on its face, is therefore inapplicable.
- C. The conspiracy allegation involves Adams and two others who, while they did provide financial support for the ongoing litigation, were not in an attorney-client relationship.
- D. Nothing in the record otherwise suggests that either Julie Smith or Joseph Smith were clients of Adams during the relevant time periods. No contract for representation, no activities on Adams’s part indicating she was representing them.
- E. *Wager v. Mirzayance* (1998) 67 Cal.App.4th 1187 [79 Cal.Rptr.2d 661], cited by Appellants, did not in any way involve an interpretation of section 1714.10. *Wager* address when a lawyer needs to notify someone that fee disputes are subject to arbitration. It is entirely sensible to notify the person paying the fees. But that’s not the issue

here. Other decisions have refused to “accept the premise that payment of attorneys' fees in itself determines the attorney-client relationship. Payment is but one indicia; the contractual intent and conduct of the parties are critical to formation of such relationship.” (*Lasky, Haas, Cohler & Munter v. Superior Court* (1985) 172 Cal.App.3d 264, 285 [218 Cal.Rptr. 205], citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 181 [98 Cal.Rptr. 837, 491 P.2d 421]; see also *Wells Fargo Bank v. Superior Court* (2000) 22 Cal.4th 201, 213 [91 Cal.Rptr.2d 716, 990 P.2d 591] (“payment of fees does not determine ownership of the attorney-client privilege”).)

III Jones’s claims are based almost entirely on court filings, and to the extent that they are, we concede that 425.16(e)(1) & (2) applies.

A. These sections apply to statements made in judicial proceedings or in connection with judicial proceedings. All Jones’s claims are concededly based on such statements. The trial court mistakenly found that there was a public issue requirement, but the courts have subsequently said no to that.

IV. Remand is appropriate because the trial court did not reach the issue of whether Jones can show a probability of success on the merits.

A. If the statute applies, the burden shifts to the plaintiff to establish a probability that he will prevail on the merits. (Code of Civ. Proc. § 425.16(b)(1).) If a plaintiff like Jones can demonstrate a probability that he will prevail on his claims, the SLAPP motion must be denied. (Code of Civ. Proc. § 425.16(b)(1); *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1089 [114 Cal.Rptr.2d 825].)

B. This Court should remand the case so that the Superior Court may consider whether Jones is able to establish a probability that he will prevail on the merits of his claims. The trial court is most familiar with the issues and, particularly given the additional developing evidence regarding the frivolous nature of Appellants’ litigation practices, the

trial court should have a full opportunity to consider this prong of the SLAPP analysis.

V In any event, Jones has demonstrated a probability that he will prevail on his claims.

- A. The standard is not a high one – the probability of success analysis should not be used to deprive a plaintiff of his right to a jury trial on his meritorious claims.
- B. The California Supreme Court has indicated that a plaintiff must only establish “minimal merit” to meet this prong of the analysis. *Navellier v. Sletten*, (2002) 29 Cal.4th 82, 93 [124 Cal.Rptr.2d 530, 52 P.3d 703], the California Supreme Court stated that “as our emerging anti-SLAPP jurisprudence makes plain, the statute poses no obstacle to suits that possess *minimal* merit.” (*Navellier, supra*, 29 Cal.4th at p. 93 (emphasis added).)
- C. Need to show legal sufficiency and a prima facie showing of facts. To defeat a SLAPP motion by establishing probability of success on the merits, a plaintiff “must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts.
- D. We have done that on every one of our claims. The requisite elements have been pled and the evidence is found for the most part in the

publically-available court documents referenced in our papers and requests for judicial notice.

- E. Defamation claim is not barred by the Litigation Privilege. Civil Code section 47(b) immunizes any publication “(1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.” (*Silverg v. Anderson* (1990) 50 Cal.3d 205, 212 [266 Cal.Rptr. 638, 786 P.2d 365].) But the privilege does not apply “when the matter is ‘so palpably irrelevant to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety.’” (*Lewis, supra*, 209 Cal.App.2d at p. 399, quoting 33 Am.Jr. 146-47.) The statements relied on by Jones in support of his claims meet this test because, while they were made in judicial proceedings, they were not statements made “to achieve the objects of the litigation,” had no “connection or logical relation” to the action, and no reasonable person could doubt that they were irrelevant and improper.

Monroe Action – the case was about the referee/commissioner’s alleged bias. Statements about Jones’s work history and alleged sexual practices are irrelevant to that.

Madison Action – Jones was not even a party to that action against a therapist. Again, statements about Jones’s actions and alleged sexual history are entirely irrelevant. There is no authority for the proposition that the litigation privilege extends to gratuitous allegations that have nothing to do with the object of the litigation. The litigation privilege is not a license to libel.

- F. invasion-of-privacy claim. Jones claims that Adams hired a private investigator to follow him and that Janet Smith disclosed confidential information regarding the molestation of a minor child of Jones’s by one of Janet Smith’s children by placing such information in public court records. Appellants have cited no persuasive authority for the proposition that a parent may not attempt to defend the privacy of one of his children.
- G. abuse-of-process claim. Appellants’ own actions before this court support this claim. It’s obvious from their own briefing that the purpose of filing the multiple cases against Jones, as well as against

every judge, social worker, and prosecutor who ever got entangled in this matter, was to abuse the system and gain improper advantage. “abuse of process requires an act outside the purpose of the process.” (*Brown v. Kennard* (2001) 94 Cal.App.4th 40, 44 [113 Cal.Rptr.2d 891].) Appellants record of filing multiple actions in multiple forums against Jones, therapists, social workers, state judges, state agencies, and the IRS, all of which were promptly dismissed as lacking merit, certainly supports Jones’s contention that Appellants had ulterior motives in filing these lawsuits and that their actions have gone far beyond proper use of the judicial system.

- H. Malicious Prosecution – Jones’s claim is not premised only on the voluntary dismissal of the Boyle Action by Appellants. Jones also cites the filing of the Smith I Action and the Meinke Action, both of which were successfully resolved in Jones’s favor.
- I. conspiracy. Jones pled the requisite elements of a civil conspiracy claim, and Appellants’ only challenge to the conspiracy claim was made on the basis of Civil Code section 1714.10.
- J. emotional distress and wanton and reckless conduct claims. Appellants did not challenge the legal or factual sufficiency of the

emotional distress claims in their brief, and it is clear that Jones pled the requisite elements supported by the pleadings and court documents included in the record. Jones’s claim for wanton and reckless misconduct is also sufficient. Such a claim has been recognized by California courts, and wanton and reckless misconduct is conduct that has been defined as conduct beyond negligence consisting of a “dangerous act performed intentionally with the knowledge that it will probably cause harm.” (*Donnelly v. Southern Pac. Co.* (1941) 18 Cal.2d 863, 870 [118 P.2d 465].) Jones alleged that Appellants acted in a wanton and reckless manner with total disregard for possible injury to him, which appears to be sufficient to plead a claim of wanton and reckless misconduct. (*Donnelly, supra*, 18 Cal.2d at p. 870.)

VI The Superior Court correctly denied the motion to strike the first amended complaint because that order is not appealable, and Jones amended by right.

- A. That interlocutory order is not an appealable order and cannot be reviewed in this appeal. California law is clear that no direct appeal lies from an order denying a motion to strike all or part of a pleading. (*Warden v. Brown* (1960) 185 Cal.App.2d 626, 629 [8 Cal.Rptr. 518].)
- B. Under California Code of Civil Procedure section 472, a plaintiff may amend his complaint once without leave of court before a defendant’s

answer is filed or, if the defendant demurs, before the hearing on the demurrer. (Cal. Code Civ. Proc. § 472.) That is just what Jones did.