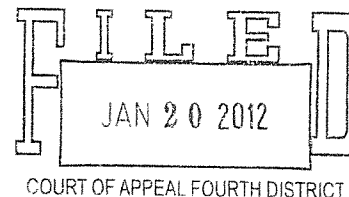


COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER



ANTELOPE VALLEY GROUNDWATER
CASES

E055412

(Super.Ct.No. JCCP4408 &
BC364553)

The County of Los Angeles

THE COURT

This court has reviewed the letter dated December 21, 2011, from Joseph A. Lane, Clerk of the Second Appellate District, directing appellant to show cause why the appeal should not be dismissed as untimely, the response filed by appellant Los Angeles County Waterworks District No. 40 filed on January 6, 2012, and the "response" filed by Rebecca Lee Willis and the Willis Class (Willis) on January 6, 2012. The Willis "response" is, for all intents and purposes, a motion to dismiss the appeal as untimely and is therefore DEEMED by this court to be so.

Consequently, appellants may serve and file points and authorities in opposition to the motion to dismiss with the clerk of this court on or before 15 days from the date of this order. (Cal. Rules of Court, rule 8.54(a)(3).) The opposition should be addressed to the points set out below. Failure to file opposition may be deemed an abandonment of the appeal. (Cal. Rules of Court, rule 8.54(c).)

The motion is made on the grounds that the notice of appeal was filed on the 61st day after service of notice of entry of judgment and is therefore untimely under California Rules of Court, rule 8.104(a)(1). However, appellant Los Angeles County Waterworks District No. 40 states that the notice of appeal was delivered for filing on November 28, 2011, and has provided a declaration of Charles Walter Smith stating that because of the late hour, he was directed by the trial court clerk to drop the notice of appeal into a basket and that it would be filed with the date of drop off. Consequently, the notice of appeal appears to have been timely filed from the September 22, 2011, amended judgment. (Cal. Rules of Court, rule 2.210(b).) The Willis motion also argues that appellants should not receive the benefit of the extended appeal time provided by California Rules of Court, rule 8.108(f) because the election to pay a judgment in periodic payments was not valid and therefore could not extend the time in which to appeal. While this point is well taken and appears to be valid, in light of the apparent application of the "drop box rule"

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appellants would not require the extension of time in which to appeal provided by California Rules of Court, rule 8.108(f).

Finally, the Willis motion is based upon the assertion that the appeal is untimely because it should have been taken from the May 13, 2011, judgment, for which notice of entry was served on May 19, 2011. Willis asserts that the amended judgment filed September 22, 2011, from which appellants purport to appeal was merely a clerical and ministerial adjustment to add a supplemental attorneys' fees award that did not, therefore, recommence the time for filing a notice of appeal. Insofar as the appellants intend to challenge any rulings encompassed in the May 13, 2011 judgment, this assertion appears to be valid. (*Torres v. City of San Diego* (2007) 154, Cal.App.4th 214, 222; see also *Dakota Payphone LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 505, 509.) The Willis motion also claims that the November 28, 2011 notice of appeal was not timely filed within 60 days of the September 6, 2011 postjudgment order awarding supplemental attorneys' fees but does not provide a date that notice of entry of that order was served. California Rules of Court, rule 8.104(a) provides that a notice of appeal must be filed within 60 days following the service of notice of entry of judgment or 180 days after entry of the judgment/appealable order, whichever is earlier. Consequently, even if the September 6, 2011 postjudgment order was the separately appealable order and not the September 22, 2011 amended judgment, at present it appears that appellants filed a timely challenge to the order for supplemental attorneys' fees.

RAMIREZ

Presiding Justice

cc: See attached list

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Antelope Valley Groundwater Cases

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