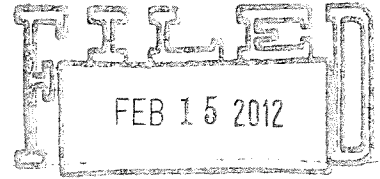


COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER



ANTELOPE VALLEY GROUNDWATER
CASES.

E055412

COURT OF APPEAL FOURTH DISTRICT

(Super.Ct.No. JCCP4408 &
BC364553)

The County of Los Angeles

THE COURT

On January 20, 2012, this court issued an order deeming a "response" filed by respondents Rebecca Lee Willis and the Willis Class (Willis) on January 6, 2012, to an order to show cause why the appeal should not be dismissed as untimely to a be motion to dismiss the appeal as untimely and offered appellants the opportunity to respond. The court has reviewed the opposition filed by appellants Los Angeles County Waterworks District No. 40 (LACWD) on February 6, 2012, as well as the "reply brief" filed by Willis on February 9, 2012. Appellants Littlerock Creek Irrigation District et al. did not file any opposition. The motion to dismiss the appeal is DENIED.

As indicated in this court's order filed January 20, 2012, 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 LACWD 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. It is not necessary for the court to determine the validity of this assertion since in light of the application of the "drop box rule" appellants do not require the extension of time in which to appeal provided by California Rules of Court, rule 8.108(f).

COPY

The Willis motion is further 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, or from the May 6, 2011, order granting an award of fees and costs. 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. It is true that the May 6, 2011, order granting attorney fees, costs and class representative award was either a separately appealable collateral order, or was made appealable by the May 13, 2011, judgment. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 637; Code Civ. Proc., § 906.) No timely appeal was filed either from the May 6, 2011, order or from the May 13, 2011, judgment. Appellants therefore, may not challenge any rulings encompassed in the May 6, 2011, order or the May 13, 2011, judgment. (Code Civ. Proc., § 906; *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56; see also *Dakota Payphone LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 505, 509 and *Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 222.) However, in its opposition to the motion to dismiss the appeal LACWD expressly disclaims any intention to challenge the May 13, 2011, judgment from which it did not file a notice of appeal.

Finally, in a related argument, the moving parties claim that the appeal should have been taken, not from the amended judgment, but from the September 6, 2011, postjudgment order awarding supplemental attorneys' fees and that the November 28, 2011, notice of appeal was not timely filed within 60 days of the September 6, 2011, postjudgment order. 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. The moving party has not demonstrated that notice of entry of the September 6, 2011, postjudgment order awarding supplemental attorneys' fees was ever served. 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. (See *Luz v. Lopes* (1960) 55 Cal.2d 54, 59; see also *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20 ["[N]otices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where respondent could not possibly have been misled or prejudiced."].)

HAMIREZ

Presiding Justice

cc: See attached list

MAILING LIST FOR CASE: E055412
Antelope Valley Groundwater Cases

Superior Court Clerk
Los Angeles County
111 North Hill Street
Los Angeles, CA 90012

Ralph B. Kalfayan
Krause, Kalfayan, Benink & Slavens LLP.
550 West C Street
Suite 530
San Diego, CA 92101

Jeffrey V. Dunn
Best, Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

Warren Robert Wellen
Ofc County Counsel
500 W Temple St
Los Angeles, CA 90012

Wayne K. Lemieux
Lemieux & O' Neill
4165 E. Thousand Oaks Blvd.
Suite 350
Westlake Village, CA 91362