DailyNews

Are Anti-SLAPP Orders 'Judgments'? California's Second District Weighs In

Tim Kowal *August 21, 2024*

You already know that an order granting an anti-SLAPP motion is immediately appealable—that is, you should not wait around for a formal judgment before

appealing. That's why the plaintiff in *WasteXperts, Inc. v. Arakelian Enterprises, Inc.* (2024) 103 Cal.App.5th 652 appealed immediately. But what about when the court later enters a formal judgment? Does that need to be appealed too?

The plaintiff in *WasteXperts* did not appeal from the judgment. And the defendant moved to dismiss the appeal as moot. The defendant had a point: Although the anti-SLAPP grant on all claims was appealable, it was not a *judgment*. That is because, by law, a judgment dismissing all claims must be signed. (Code Civ. Proc., § 581d.) And the anti-SLAPP order was not signed. And it directed preparation of a formal judgment.

But the court held that it had jurisdiction despite the lack of an appeal from the judgment. The entirety of the court's analysis, contained in a footnote, is: "An order granting an anti-SLAPP motion as to the entire complaint is itself a judgment. (*Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 992–997.)"

Initially, note that the pincite to *Melbostad* for this proposition—which the court thought needed no further explanation—is to six pages. And in fact those pages in *Melbostad* do not clear up the issue. Instead, they cover a split of authority and ultimately support a number of propositions, such as

- (1) SLAPP fee orders are not appealable except as orders following a judgment (§ 904.1(a)(2))—and a SLAPP order is *not* a judgment for purposes of section 904.1(a)(2);
- (2) on the other hand, *Melbostad* noted the principle that whether an order is a "judgment" is determined not by the form but the substance and effect; but ultimately
- (3) the anti-SLAPP order in *Melbostad* was held to be a "judgment" because it was consistent with section 581d: it was signed, dismissed the complaint in its entirety with prejudice, and contemplated no further order.

But a mere pincite to the six pages that cover these different propositions does not discharge the Court of Appeal's duty to address doubts about its jurisdiction. (*Olson v. Cory* (1983) 35 Cal.3d 390, 398 ["[S]ince the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion."].)

The court published this opinion to highlight its note about attorney incivility. I have seen worse cases of incivility, and you probably have, too. But I suspect the court

drew attention to it—both in the opinion and at oral argument, belaboring the point for several long minutes and soliciting an apology before moving to the merits—because the offending party prevailed, and the court did not want to suggest that this had anything to do with the unfortunate choice of language and tone.

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