

No. D083677

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

ANTWOINE BEALER

Plaintiff-Appellant

v.

COUNTY OF SAN DIEGO et al.

Defendant-Respondent

On Appeal from the Superior Court

For the County of San Diego

Honorable Richard S. Whitney

Case No. 37-2021-00030001-CU-WM-CTL

APPELLANT'S REPLY BRIEF

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Court of Appeal
Fourth Appellate District
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INTRODUCTION

The Verified Petition of Mandate (37-2021-00030001-CU-WM-CTL) was filed against the County of San Diego's District Attorney Office and the Sheriff's Department for failing to **fully** comply with an order of the Superior Court Judge in a Writ of Mandate filed on July 13, 2021 (37-2018-0001849544-CU-WM-CTL). The Judge in the 2018 original action ruled "based on the above, the Court finds that the District Attorney's Office **must** comply with Section 624(f)(1)-(2)(A) **in full.**" (emphasis added) (Clerk's Transcript, Vol. 1 of 1 [Minute Order dated 05/12/2023])

The Appellant was and still is in custody of the California Department of Corrections and Rehabilitation when both petitions were filed and ruled on. He relied on his Attorneys to secure the documents that he knew would help release him from prison. When his Attorneys called and told him that they had obtained all the documents the District Attorney Office possessed he was ecstatic. He felt the fight was finally over. He knew the GPS log and Computer Aided Dispatch (CAD) would show exactly what he had been saying for almost 20 years. He knew the GPS log would give the precise locations of the Deputy Sheriff who pulled him over on October 15, 2004, and collaborate his position.

The points in the Respondent brief are:

(1) res judicata applies because the prior decision was on the merits, the same causes of action, and the parties are the same. (2) Appellant fails to show that **any** exception to res judicata applies (emphasis added) (3) Appellant fails to show any error in the trial court's finding (4) finality of judgments applies. The Appellant feels the Respondent is incorrect on all points except the parties are the same.

ARGUMENTS

1

The 2018 Action does not bar this action by Res Judicata

Claim preclusion is sometimes referred to as res judicata.

"The purpose of claim preclusion is "[t]o preclude parties from contesting matters that they have had a full and fair opportunity to litigate," which serves to protect against "the expense and vexation attending multiple lawsuits, conserve[] judicial resources, and foster[] reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

The Respondent argument is the demurrer on ground of res judicata should stand because it was already agreed that all the documents produced by the County were "satisfactory." Appellant position is if the premise of the agreement was false it voids the contract. The agreement was that the Respondent had provided all the information and had fully complied with the Judge's Order. The Appellant agreed to what he thought was a true representation of what was relayed to him by his Attorney. He had no idea that the documents that were finally sent to him were erroneous, altered, or incomplete documents. No matter which one it was, it deprived the Appellant the opportunity to obtain exculpatory evidence and the mistake

needed to be corrected which brought forth the 2021 action. The complete and original GPS log will reflect the true picture.

The Appellant position is the ruling factor is they must comply with the Judge's order fully. If the Respondent failed to comply by providing incomplete documents, that breaches the Judge's order. The agreement does not matter because the Judge's order is the supreme authority. When they failed to produce the accurate GPS log the agreement was void.

The attempts to obtain these documents have been extensive and exhausting. The Respondent has continually engaged in a pattern of discovery abuse. The Appellant has requested documents before, during and after his trial concerning the stop on October 15, 2004. The attempts were made by the Appellant, the Appellant mother, two different lawyers and one of the local San Diego Newspaper.

The Judge in 2018 original Action saw this pattern of abuse.

"The moving papers and supporting declarations discuss petitioner's on-going attempts to obtain records related to this criminal case since the trial. While the information provided is background explaining petitioner's motivation for the record, the issue presented here is requests made under the California Public Records Act." [2018 Action Minute Order dated 11/24/2020 p. 1] "" Specifically, petitioner submitted two identical requests to the District Attorney's Office and the Sheriff on October 28, 2016. The requests asked for "records created by or in the possession of this agency related to Case No. [S]CE244421 (2005)." Tucker Decl. Exhs. A-B. [2018 Action Minute Order dated 11/24/2020 p. 1] Petitioner requested a number of specific type of records, as well as any "paper records related to Mr. Bealer" and any "electronic records related to Mr. Bealer." *Id.*

“... the risk of the mistake; and (4) the effect of the mistake is such that enforcement of the contract would be unconscionable.”
(*Donovan, supra, 26 Cal.4th Georgia at p. 282.*)

A party may rescind a contract if his or her consent was given by mistake. (Civ. Code, § 1689, subd. (b)(1).) A factual mistake by one party to a contract, or unilateral mistake, affords a ground for rescission in some circumstances. Civil Code section 1577 states in relevant part: "Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in: [¶] 1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract. . . ."

The Appellant made the simple mistake of believing his attorneys that all the discovery had been turned over. He was not in the position to look at the material because he did not have access to it before it was mailed to him. His Attorneys made the mistake of believing the Respondent when they stated all the information was in the package.

The Appellant knows beyond a reasonable doubt that the County has not complied with the Judge's order in full. The GPS they provided was not complete because it was missing an entire ten minutes. The ten minutes that would disprove the Deputy Sheriff's entire testimony that sent the Appellate to Prison for 35 years. The ten minutes that would show the Appellant was nowhere near the crime scene. The ten minutes that would show the Deputy Sheriff's movements that would completely contradict everything he testified under oath.

Isn't it reasonable to ask why the GPS log is missing ten minutes? Why does the GPS log only document the time the incident was called in and the time the Appellant was taken to the station?

Why did the GPS not document the deputy sheriff's entire movements that night? It is unreasonable for anyone to think that a GPS documents every 10 minutes. The function of the GPS is to record the location of the vehicle. Ten-minute gaps would negate the reason for paying millions of dollars for the system.

But that is what the Respondent is requiring the Appellant and the Court to believe. There is only one logical explanation and that the GPS given to the Appellant is erroneous, altered, or incomplete.

"On appeal, when the extrinsic evidence is undisputed, as it is here, we review the contract de novo to determine unconscionability *Gatton v T-Mobile USA, Inc.*, 152 Cal. Ct. App. 2007 citing (*Stirlen v Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1527 [60 Cal.Rptr.2d 138] (*Stirlen*); *Flores*, at p. 851

"The procedural element of the unconscionability analysis concerns the manner in which the contract was negotiated and the circumstances of the parties at that time. (*Kinney v. United Healthcare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1329 [83 Cal.Rptr.2d 348], citing *A & M Produce, supra*, 135 Cal.App.3d at p. 486.) The element focuses on oppression or surprise. (*Armendariz, supra*, 24 Cal.4th at p. 114.) "Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice." (*Flores, supra*, 93 Cal.App.4th at p. 853, citing *A & M Produce*, at p. 486.)⁵

2

Exceptions to Res Judicata apply to this case

Continuous Wrong

Respondent states that Appellant fails to show that any exception to res judicata applies. It has been clear that they have continually wronged the Appellant with withholding discovery for

almost 20 years. To allow them to continuously withhold evidence from the Appellant and then withhold it again by using the res judicata doctrine not only is an injustice but negates the public policy exception and will do harm to the public if they are allowed to prevail.

“The doctrine of res judicata holds that a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. If a continuing course of wrongful conduct gives rise to a new cause of action, however, res judicata does not apply. Similarly, claims that could not have been brought at the time of the first action are not barred.” *John Michael Jones v. Westminster LLC*, 334447 (Mich. Ct. App. 2018)

Injustice and Public Interest

“The court stated that even if the threshold requirements are established, 'res judicata will not be applied 'if injustice would result or if the public interest requires that relitigation not be foreclosed.' "4 *Id.* at 1065 (quoting *Consumers Lobby Against Monopolies v. Public Utilities Com.*, 25 Cal.3d 891, 902 (1979)). *Stokes v. City of Visalia*, Case No. 1:17-cv-01350-SAB (E.D. Cal. Jun 08, 2018)

Appellant has fought for these records for almost 20 years. It would be unconscionable and do great harm to the public interest if they were allowed to directly disobey a Judge's order and hide behind res judicata. They would have desecrated the brady doctrine and all rules of discovery.

“We are mindful of the rule that a judgment rendered in an action in personam by a court having jurisdiction over the subject matter and the parties is not void and subject to collateral attack merely because it may erroneously determine some matter not specifically raised in the pleadings, and not covered by the evidence before the trial court, and that such a judgment is res judicata. We adhere to this rule. (See, *Kupfer v. Brawner*, 19 Cal.2d 562 [122 P.2d

268]; *Estate of Keet*, 15 Cal.2d 328 [100 P.2d 1045].) But in rare cases a judgment may not be res judicata, when proper consideration is given to the policy underlying the doctrine, and there are rare instances in which it is not applied. In such cases it will not be applied so rigidly as to defeat the ends of justice or important considerations of policy. (See, *Guardianship of Di Carlo*, 3 Cal.2d 225 [44 P.2d 562, 99 A.L.R. 990]; 50 C.J.S., *Judgments*, § 592.)” *Greenfield v. Mather* (1948) 32 Cal. 2d 23, 35 [194 P.2d 1]

3

Judge Errors

- a. The trial Judge erred in sustaining the Demurrer and granting Demurrer with prejudice

The trial Judge in 2021 action erred in sustaining the demurrer. The new complaint was not relitigating but correction of a continuous wrong and trying to get enforcement of the first lawsuit. The Respondent filing the demurrer is just a continuation of what they have been doing from day one—keeping evidence from the Appellant. The Appellant is just requesting that this court follow suit with the 2018 action and finally put a stop this continuing wrong and injustice.

- b. Acceptance of untimely Demurrer

For the action to be timely, it had to be filed by December 29, 2022. With the 30-day automatic extension it should have been filed on January 28th. The Demurrer was filed on February 7, 2023. Therefore, the Appellant stands by its original stance that the demurrer was untimely and should have been dismissed. The 30-day extension affords 60 days. Respondent filed the demurrer 69 days after the summons. Thereby the demurrer should have been invalid.

The summon was served to the County on 11/30/2022. The county filed the demur on 02/07/2023 (ROA 49) 69 days after the summons was served. Code of Civil Procedure Section 430.40 states the time for filing a demurrer to a complaint is 30 days. On 05/12/2023 Judgment of Dismissal was filed by the County of San Diego. (Clerk's Transcript, Vol 1 of 1["CT"] 224)

The legitimacy of the Respondent's case rests on the premise it was agreed between the parties that the records were "satisfactory." The Judge in the 2018 action gave an order for them to fully comply in the production of the records. When they provided an incomplete GPS log it nullified the satisfactory element of their argument and the validity that the demurrer was properly sustained.

For res judicata to bar the 2021 action, the action not only had to be fully litigated it also had to be given a fair opportunity to be litigated. If the action were fully litigated fairly, the Appellate would have the documents in his hands right now with the missing ten minutes. The Judge in the 2021 action should have never granted the demurrer without looking into the claim that the Respondent had not complied with the **full** order of the judge. By granting the demurrer the Judge cut the Appellant off at the knees and sent him back 20 years to the very beginning.

4

Finality of Judgment does not apply

The finality of this judgment does not apply for three reasons. One it should have been invalidated because it was filed untimely. Two the demurrer should not have been granted before giving the Appellant

the opportunity to present his side of why the information provided by the Respondent was erroneous, altered, or incomplete. Third it was an error to rule with prejudice.

5

Applied Unduly harsh standards to Appellant as a pro Se Litigant

"Pleadings of pro se plaintiffs "must be held to less stringent standards than formal pleadings drafted by lawyers." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after *Iqbal*)." *Maestas v. Phillips*, 1:23-cv-00893-EPG, 3 (E.D. Cal. Aug. 14, 2023)

Respondent states Appellant did not establish extraordinary injustice to warrant an exception because he is a pro se litigant. Appellant has been moved again since the appeal paperwork was filed. It is uncanny how CDCR always seems to move the Appellant around when he is involved in a case. As of February 12, 2024, he was moved from High Desert State Prison to San Quentin. On February 13th (the next day) he was moved from San Quentin to Correctional Training Facility (CTF) in Soledad. He was moved again from CTF to Calipatria. They had proposed moving him to Centinela until calls were made to the PIO. All these moves have disturbed his access to legal documents etc. Appellant would think this was a coincidence if it had not happened in another case. CDCR moved him 15 days (about 2 weeks) before a case where he sued Officers for assaulting him. All this activity has taken a toll on him and his ability to pursue this case.

6

Misconduct by County

Respondent says the Appellant implies misconduct without citation.

"The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n. 6 (1963). A plaintiff need not allege "'specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief." Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949. Schmidt v. County of Nevada, NO. 2:10-CV-3022 FCD/EFB, 6 (E.D. Cal. Jul. 19, 2011)

The facts set forth in the complaint clearly shows that this continuous, blatant conduct of the County rise to level of conduct in California Code, Civil Code - CIV § 3294.

(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(c) As used in this section, the following definitions shall apply:

(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

The incomplete GPS log clearly shows the misconduct of the County. The continual withholding of the documents adequately documented by the Judge in the 2018 case clearly shows the county's misconduct. The Respondent says, "it is well established that all presumptions of law are in favor of the good faith of public officials." Without evidence to the contrary this may be true. However, the County has repeatedly shown their willingness to circumvent the law by withholding evidence that the law clearly states the Appellant is entitled to.

The County lost that favor when they refused to follow the law and withheld the evidence in direct opposition to the Brady doctrine during trial. They forfeited that favor when they insulted the Appellant by sending him record retention and destruction policies instead of the discovery when he continually asked for the information over almost a 20-year journey. (Clerk's Transcript, Vol. 1 of 1 [Minute Order dated 05/12/2023] Relying on "Good faith of public Officials" is what has kept the Appellant in prison for almost two decades. "Good faith of public officials has kept discovery information from the Appellant for years.

The Appellant disagrees with County's statement of facts and procedure. Respondent is trying to narrow the scope of what the Appellant has requested from the beginning. In the Respondent brief under Statement of Facts and Procedure they state, "Appellant seeks ...and the location of the deputy sheriff at the time of the stop." They use the Appellant opening brief (Petition, pp. 7-8]; Appellant's Opening Brief["AOB"], pp. 7-8, 11-13.) to justify this position. It is

noticeably clear what the Appellant has been seeking. He has asked for the original GPS log that documents the deputy sheriff movements from the beginning to the end not just “at the time of the stop.” The Appellant even broke it down in his brief that ten minutes were missing and seeks to obtain the true and original GPS log.

The Respondent case is predicated on the fact that the Appellant’s counsel in the 2018 case agreed that the production of the documents was “satisfactory”. The County’s own contention is that “it is well established that all presumptions of law are in favor of the good faith of public official.” [“RB” p.14] But in direct conflict with this contention the county states that the counsel could not have taken the word of the County regarding the documents. It is this presumption that has the Appellant still in prison. It is this presumption that the counsel did not think twice about questioning the Respondent when they thought they had complied fully with the Judge’s order. Why should they question them when it is well established, they will deal fairly with you. This case should not rest on what the counsel said about being satisfactory but on what the Judge ordered (full compliance). Full compliance does not mean providing an erroneous, altered, or incomplete Radio log.

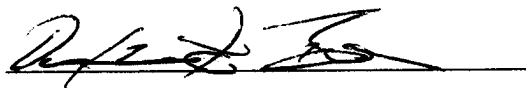
CONCLUSION

The Appellant humbly requests the Court to reverse the trial court's judgment of dismissal after sustaining the demurrer to Appellant's Petition without leave to amend.

For the reasons argued the judgment should be reversed and the County of San Diego ordered to turn over the correct GPS log, Computer Aided Dispatch (CAD) transcript and all discovery materials related to the Bealer case. We respectfully ask the Appeal court to order them to provide complete documentation of any destruction of records. The name of the person(s) who ordered the destruction, date, time, and year. If the Appeal Court has the authority, the Appellant respectfully asks them to release him from prison.

CERTIFICATE OF WORD COUNT

I certify that the text of this brief was counted by WORDS EDITOR and consists of 3447 words. It includes footnotes and excludes table of contents and authorities.



Antwoine Bealer

7-18-22

Date

Pro Se

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 - a. ☒ **Mail**. I mailed a copy of the document identified above as follows:
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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