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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.J., a Minor, by her Guardian Ad Litem, Erick Jimenez, Appellant/Plaintiff, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Respondents/Defendants.	SUPREME COURT CASE NO.: APPELLATE CASE NO.: B269864 TRIAL CASE NO.: BC505356

PETITION FOR REVIEW

Appeal From the Superior Court of California, County of Los Angeles,
Case Number BC505356
The Honorable William P. Barry

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.J., a Minor, by her Guardian Ad Litem, Erick Jimenez, Appellant/Plaintiff, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Respondents/Defendants.	SUPREME COURT CASE NO.: APPELLATE CASE NO.: B269864 TRIAL CASE NO.: BC505356

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Objector and Appellant, Luis A. Carrillo, respectfully petitions for review of the Opinion by the California Court of Appeal, Second Appellate District, Division Three. The Opinion, which was filed on February 23, 2017, declined to resolve on the merits Mr. Carrillo's appeal of a court order imposing $16,111.00 in monetary sanctions against him related to a contempt hearing, which was issued by the trial court, even though a temporary stay of the contempt order had been issued by the Court of Appeal in the related case *In re Luis*

Carrillo, Appellate Case No. B267743. In the instant case, the Court of Appeal decided the appeal on a procedural issue rather than on the merits because, on the Notice of Appeal, Mr. Carrillo, the attorney for plaintiff K.J., retained the same case caption and party names of the underlying trial court case in which the sanctions order was issued. Even though the appeal plainly set forth the order being appealed was against Mr. Carrillo and the grounds for its invalidation and Respondents were neither misled or prejudiced, the Court of Appeal concluded that it lacked jurisdiction to review the sanctions order. In doing so, the Court of Appeal created a greater divide among appellate courts that liberally construe the Notice of Appeal and those that decline to do so. The Opinion became final on March 25, 2017. Mr. Carrillo files this Petition within ten days as required by California Rules of Court, rule 8.500.

ISSUES PRESENTED

1) Whether the Notice of Appeal must be liberally construed where the order being appealed imposes monetary sanctions on a non-party attorney, the notice of appeal retains the same case caption and only the party names from the underlying trial court case in which the sanctions order was issued, and the respondent was not and could not possibly have been misled or prejudiced?

REASONS FOR REVIEW

Review is necessary to secure uniformity of decision and to settle an important question of law. (Cal. Rules of Court, rule 8.500, subd. (b)(1).)

STATEMENT OF THE CASE AND FACTS

The instant case arises from a series of events that ultimately culminated in the trial court erroneously sanctioning Mr. Luis A. Carrillo $16,111.00 in fees and costs related to a contempt hearing after a temporary stay of the contempt order had been issued by the Court of Appeal in the related case *In re Luis Carrillo*, Appellate Case No. B267743.

On September 30, 2015, the trial court held a contempt hearing against Mr. Carrillo, the attorney for the underlying minor-plaintiff, K.J., wherein it found Mr. Carrillo in contempt of court for protecting his client from suffering re-traumatization at the hands of LAUSD's expert independent medical examiner. Subsequently, on October 13, 2015, the trial court entered an order sentencing Mr. Carrillo to 24 hours in jail and permitting the Los Angeles Unified School District ("LAUSD") to apply for fees and costs it incurred related to the

contempt hearing. Mr. Carrillo subsequently filed his Petition for Writ of Habeas Corpus with the California Court of Appeal in the related case *In re Luis Carrillo*, Appellate Case No. B267743, challenging the trial court's finding of contempt and sentence of imprisonment. While Mr. Carrillo challenged the trial court's October 13, 2015 Order, LAUSD filed its motion for fees and costs related to Mr. Carrillo's contempt proceeding pursuant to the trial court's October 13, 2015 Order.

On October 26, 2015, the Court of Appeal issued a temporary stay order in Appellate Case No. B267743, which stayed the trial court's October 13, 2015 Order pending further order of the Court of Appeal. Notwithstanding that stay, the trial court nevertheless granted LAUSD's motion for fees and costs on December 1, 2015, and awarded LAUSD $16,111 in fees and costs, a portion of which related to Mr. Carrillo's contempt hearing, and the trial court declared that "this particular decision will stand, in my view, regardless of what the appellate decision is" in *In re Luis Carrillo*, Appellate Case No. B267743.

Eventually, on January 8, 2016, the Court of Appeal issued a *Palma* Notice[1] to the trial court in *In re Luis Carrillo*, Appellate Case No. B267743, explaining that the trial court could avoid the issuance of the Writ by vacating its October 13, 2015 Order; the trial court subsequently entered a new order on January 29, 2016, vacating its October 13, 2015 Order, which found Mr. Carrillo in contempt. However, according to the trial court, the December 1, 2015 Order awarding fees and costs related to the contempt hearing was still in effect.

Consequently, on January 26, 2016, a timely Notice of Appeal was filed pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12), "[f]rom an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)." The Notice of Appeal retained the same case caption and party names of the underlying trial court case in which the sanctions order was issued.

On appeal, the issues raised concerned only the sanctions imposed by the trial court against Mr. Carrillo. Specifically, the arguments concerned the trial court's improper award of fees and

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[1] *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

costs relating to Mr. Carrillo's contempt proceeding, the issuance of sanctions not authorized by the pertinent discovery statutes, and the order awarding LAUSD fees and costs for expenses that, at the time, LAUSD had not yet incurred. LAUSD, however, argued that the case caption on the Notice of Appeal listed K.J. as the appealing party and that K.J. lacked standing to bring the appeal on Mr. Carrillo's behalf.

On February 23, 2016, the Court of Appeal issued its opinion, dismissing the appeal on the basis that it lacked jurisdiction to review the sanctions ruling because Mr. Carrillo, not K.J., was the aggrieved party, but was not the party listed on the Notice of Appeal. In doing so, the Court of Appeal declined to liberally construe the notice of appeal and to hear the merits of the case. No petition for rehearing was filed with the Court of Appeal.

ARGUMENT

I. THE COURT OF APPEAL ERRONEOUSLY DETERMINED THAT IT LACKED JURISDICTION TO REVIEW THE SANCTIONS RULING

The first and most basic ground for Supreme Court review is when review is necessary to secure uniformity of decision or to settle an important question of law. (Cal. Rules of Ct., rule 8.500, subd.

(b)(1).) In the instant case, the appellate court's decision creates a greater rift among the Courts of Appeal with regard to the application of the plain language in California Rules of Court, rule 8.100, subdivision (a)(2), which provides "the notice of appeal must be liberally construed." Consequently, review before this Court is necessary to both settle an important question of law and to secure uniformity.

A. THE RULES OF COURT AND SEVERAL APPELLATE COURTS FIND THAT NOTICES OF APPEAL ARE TO BE CONSTRUED LIBERALLY

In California, there is "strong public policy in favor of hearing appeals on the merits," which "operates against depriving an aggrieved party or attorney of a right to appeal because of noncompliance with technical requirements." (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497 [hereinafter "*Moyal*"].) "'[I]t is and has been the law of this state that notices 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 the respondent could not possibly have been misled or prejudiced.'" (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1249, citing *Luz v. Lopes* (1960) 55

Cal.2d 54, 59; Cal. Rules of Ct., rule 8.100, subd. (a)(2) ["The notice of appeal must be liberally construed. . . ."].)

In California, at least two appellate courts have applied the doctrine of liberal construction to a notice of appeal wherein a sanctioned attorney's name was omitted—*Kane v. Hurley* (1994) 30 Cal.App.4th 859 (hereinafter "*Kane*") and *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967 (hereinafter "*Eichenbaum*"). In *Kane*, *supra*, 30 Cal.App.4th 859, the Court of Appeal for the Second Appellate District liberally construed a notice of appeal that was filed by a sanctioned attorney on behalf of another party to also include the sanctioned attorney. (*Kane v. Hurley*, *supra*, 30 Cal.App.4th at p. 861, fn. 4 ["Although the better practice is for the sanctioned attorney to file a separate notice of appeal, we liberally construe the notice to include appellant"].)

Similarly, *Eichenbaum*, *supra*, 106 Cal.App.4th 967 concerned a trial court's order imposing sanctions against a plaintiff and the plaintiff's attorney. (*Id.* at pp. 972-973.) The plaintiff appealed, naming only the plaintiff as the appellant, and not his counsel, on the notice of appeal. (*Id.* at p. 974.) On appeal, the respondent contended that "because the notice of appeal named as appellant only plaintiff,

not his counsel, [the Court of Appeal] lack[s] jurisdiction to review the sanctions order insofar as it applies to counsel." (*Id.*) Rejecting this argument, the Court of Appeal for the Second Appellate District found it appropriate to apply the doctrine of liberal construction to the notice of appeal, and deemed the notice of appeal that named only the plaintiff to also include the plaintiff's attorney. (*Id.*, citing *Kane*, *supra*, 30 Cal.App.4th at p. 861, fn. 4.)

As set forth below, notwithstanding the decisions by the Court of Appeal for the Second Appellate District in *Kane* and *Eichenbaum*, at least two appellate courts have declined to apply the doctrine of liberal construction. Instead, these courts determined that the failure to include a sanctioned attorney as a party in a notice of appeal bars the appellate court from reviewing the order imposing sanctions on the attorney.

B. A MINORITY OF COURTS DECLINE TO LIBERALLY CONSTRUE THE NOTICE OF APPEAL

In the instant case, the Court of Appeal for the Second Appellate District, Division Three, declined to apply the doctrine of liberal construction to the notice of appeal, which simply retained the case caption and party names from the underlying case where the sanctions were imposed. To support its decision, the Court of Appeal

relied on *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42 (hereinafter *Calhoun*) and *People v. Indiana Lumbermens Mutual Ins. Co.* (2014) 226 Cal.App.4th 1, 10 (hereinafter *Lumbermens*).[2]

In *Calhoun*, the appellant appealed a trial court's order denying his motion to change venue. (*Calhoun, supra*, 20 Cal.App.4th 41.) The appellant not only asserted claims on his own behalf, which concerned the change of venue issue, but he also "piggybacked" a single claim on behalf of his legal counsel who had incurred monetary sanctions. (*Id.* at pp. 41-42.) The Court of Appeal for the First Appellate District held that it lacked jurisdiction to review the sanction ruling, and noted that "[a]bsent any attempted appeal by the sanctioned party, the sanction ruling is not presently reviewable." (*Id.* at p. 42.)

Lumbermens, supra, 226 Cal.App.4th 1, in turn, concerned a surety company that appealed a trial court's entry of summary judgment. (*Id.* at p. 6.) The surety company advanced several arguments on its own behalf while "piggybacking" a single claim on

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[2] *Lumbermens* was decided by the Court of Appeal for the Second Appellate District, Division Three, the same division the instant matter was heard.

behalf of its legal counsel concerning monetary sanctions, similar to the appellant in *Calhoun*. (See *id.*) Relying on *Calhoun*, the Court of Appeal for the Second Appellate District dismissed the surety's appeal of the awarded sanctions, finding that it did not have jurisdiction to review the sanctions ruling, and noting that the surety company, not the attorney, appealed. (*Id.* at p. 10.)

In sum, it is apparent that *Kane* and *Eichenbaum* are inconsistent with *Calhoun* and *Lumbermens*, and the lower appellate court's decision in the instant case creates a greater rift on the applicability of the doctrine of liberal construction.

C. THE RESOLUTION OF MR. CARRILLO'S APPEAL IMPROPERLY DEPENDED ON THE PANEL SELECTED TO REVIEW HIS APPEAL

In the instant case, the lower appellate court conclusively noted that *Lumbermens* is controlling, and relied upon the explanation set forth therein:

> "We lack jurisdiction to review the sanctions ruling because the sanctioned attorney, Rorabaugh, did not appeal. The sole appellant is Indiana, the defendant surety. However, Indiana is not aggrieved by the sanctions ruling because it was not ordered to pay sanctions (Code Civ. Proc., § 902), and it cannot appeal the sanctions award on Rorabaugh's behalf."

(Exhibit A, at p. 8, citing *Lumbermens*, *supra*, 226 Cal.App.4th at p. 10.) Elaborating further, the lower appellate court noted that *Calhoun* was directly on point. The lower court explained that the *Calhoun* Court similarly noted that it had lacked jurisdiction to review a sanctions ruling because:

> [the] "purported appeal is not by the sanctioned attorney . . . but by the plaintiff. . . . [A]ny right to appeal was vested in [the attorney], not [the plaintiff]. Had [the attorney] included himself as an additional appellant in [the plaintiff's] notice of appeal, we could have liberally construed the notice of appeal in favor of its sufficiency, but [the attorney] did not do so."[3]

(Exhibit A, at p. 9, citing *Calhoun*, *supra*, 20 Cal.App.4th at p. 42.) Making immaterial distinctions between Mr. Carrillo's circumstance and that present in *Eichenbaum*,[4] the lower appellate court concluded, "[I]n our view the weight of authority counsels against stretching the

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[3] Curiously, had the attorney in *Calhoun* included himself in the notice of appeal as an appellant, the court would not have needed to construe the notice of appeal liberally.

[4] According to the lower court, *Eichenbaum*, *supra*, 106 Cal.App.4th 967 is distinguishable because, there, the appeal of the sanction award "was ordered jointly against both the client and the attorney," whereas the sanctions in the instant case were levied only against Mr. Carrillo. (*Id.* at p. 10, fn. 5.) This is a distinction without a difference, and the focal point of a reviewing court's analysis rests on whether it could be determined "what appellant was trying to appeal from, and [whether] the respondent could not possibly have been misled or prejudiced." (*Critzer v. Enos*, *supra*, 187 Cal.App.4th at p. 1249.) *Lumbermens* and *Calhoun* are similarly devoid of this analysis.

liberal construction requirement so far as to deem a notice of appeal to include an unnamed party." (Exhibit A, at p. 10.)

In contrast, liberal construction of the notice of appeal would have been appropriate under *Kane* and *Eichenbaum*, and further warranted under the analysis set forth in *Critzer v. Enos*, *supra*, 187 Cal.App.4th at p. 1249 ("[I]t is and has been the law of this state that notices 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 the respondent could not possibly have been misled or prejudiced. (Citation)").

Although the case caption and party names of the underlying case were retained on the Notice of Appeal, it is unequivocally clear that Mr. Carrillo was the actual appellant, what he was trying to appeal from, and LAUSD could not possibly have been misled or prejudiced by the omission of his name. To be sure, the Notice of Appeal clearly indicates that the order being appealed from is the December 1, 2015 Order against Mr. Carrillo and that the appeal was sought pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12) (permitting an appeal from an order directing payment of monetary sanctions by a party or attorney if the amount exceeds

$5,000). Mr. Carrillo—and no other party—was ordered by the trial court to pay monetary sanctions to LAUSD; consequently, the only conclusion that Respondents could have reached from reviewing the Notice of Appeal and Appellant's briefing was that *Mr. Carrillo* was appealing the trial court's order awarding of fees and costs.

What is more, Respondents did not—and could not—articulate how they would be have been misled or prejudiced by the Court of Appeal liberally construing the appeal to be that of Mr. Carrillo, and deciding the appeal on its merits. The Respondents' Brief concedes as much, clearly setting forth the issue on appeal in its introduction and providing, "In this case, Appellant seeks to set aside the trial court's discovery order dated December 1, 2015. In that order, the trial court awarded attorney's fees to Respondent . . . for discovery abuses by Appellant's attorney of record, Luis A. Carrillo." Additionally, Respondents proceeded to attempt to directly address the arguments set forth in the Appellant's Opening Brief, countering that Court of Appeal Stay issued in *In re Luis Carrillo*, Appellate Case No. B267743 did not preclude the trial court from making an award of attorney's fees, that the trial court's award of $16,111 for the violation of the LAUSD expert's rights under the Code of Civil Procedure—*in*

Mr. Carrillo's efforts to protect the child plaintiff from further re-traumatization—was not an abuse of discretion, and that the trial court's award of sanctions was not based on Mr. Carrillo's contempt hearing.

Ultimately, LAUSD would not have been misled or prejudiced by the Court of Appeal liberally construing the Notice of Appeal and hearing the appeal on its merits. Consequently, the Court of Appeal erred by declining to apply the doctrine of liberal construction to the Notice of Appeal and determining that it lacked jurisdiction to resolve the substantive arguments of the appeal. Troublingly, the inconsistent application of this basic procedural principle made Mr. Carrillo's appeal wholly dependent upon the panel selected to review his appeal. Had Mr. Carrillo been in a different division of the Court of Appeal for the Second Appellate District, his appeal would have been heard on the merits. This disparity cannot persist.

CONCLUSION

In sum, it is apparent that the lower appellate court's decision in *K.J., a Minor, by her Guardian Ad Litem, Erick Jimenez v. LAUSD*, Case No. B269864 creates a greater rift in the state of the law

concerning the application of the doctrine of liberal construction to a notice of appeal. Consequently, review by this Court is necessary. For the reasons stated herein, this Petition for Review should be granted, and this cause should be set for argument.

Dated: April 3, 2017

Respectfully Submitted,

By: /Mark W. Allen
Kelly C. Quinn
Mark W. Allen
Attorneys for Appellant

CERTIFICATE OF COUNSEL

Pursuant to California Rule of Court 8.504, subdivision (d)(1) the undersigned certifies that this brief contains 3,116 words, according to the WordPerfect word count program. The word count includes footnotes but excludes the table of contents, table of authorities, and proof of service.

Dated: April 3, 2017

Respectfully Submitted,

By: /Mark W. Allen
Kelly C. Quinn
Mark W. Allen
Attorneys for Appellant

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

K.J., a Minor, etc., et al.,

Plaintiffs and Appellants,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT et al.,

Defendants and Respondents.

B269864

(Los Angeles County Super. Ct. No. BC505356)

APPEAL from an order of the Superior Court of Los Angeles County, William P. Barry, Judge. Appeal dismissed.

Werksman Jackson Hathaway & Quinn, Kelly C. Quinn and Mark W. Allen for Plaintiffs and Appellants.

Coleman and Associates, John M. Coleman; Law Offices of Bruce T. McIntosh and Bruce T. McIntosh for Defendants and Respondents.

Plaintiff and appellant K.J., a minor, purports to appeal the trial court's order requiring her attorney, Luis Carrillo, to pay attorney fees and costs as discovery sanctions to defendant and respondent Los Angeles Unified School District (LAUSD). Because K.J. was not sanctioned and attorney Carrillo has not appealed, we lack jurisdiction to review the sanctions order and therefore dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2013, after 12-year-old K.J. was allegedly sexually assaulted by an unknown male in a restroom at an LAUSD school, she sued LAUSD for negligence.[1]

In June 2015, LAUSD moved to compel K.J. to undergo a neuropsychiatric examination to be conducted by Dr. Mohan Nair. K.J. moved for a protective order. Although K.J.'s motion is not included in the record on appeal, other portions of the record demonstrate she sought to limit or preclude Dr. Nair from questioning her about the details of the sexual assault in order to avoid "retraumatizing" her. K.J. urged such questioning was unnecessary because she had already described the details of the assault at her deposition and to various medical professionals.

On July 15, 2015, the trial court denied K.J.'s motion for a protective order, granted LAUSD's motion to compel, and ordered K.J. to submit to a neuropsychiatric examination at Dr. Nair's office on July 28, 2015. The court declined to impose limitations on the scope of Dr. Nair's questioning during the examination.

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1 The record on appeal does not contain a copy of the complaint, but there is no dispute that K.J. filed a negligence complaint making these allegations.

K.J. appeared for the examination at the appointed time, accompanied by her mother and attorney Carrillo. What happened next was disputed by the parties and gave rise to the discovery dispute that resulted in the sanctions at issue here. According to K.J., prior to the examination Carrillo simply asked Dr. Nair to be mindful of K.J.'s condition and limit his questions concerning the details of the sexual assault. According to LAUSD, Carrillo's instruction or request to Dr. Nair and Nair's office manager, in K.J.'s presence, "completely undermined" the trial court's July 15, 2015 order and "directly led" K.J. to refuse to answer questions during the examination. LAUSD also insisted that Carrillo "unilaterally departed" with K.J. before the examination was completed; K.J. countered that Nair cancelled the remaining portion of the examination when Carrillo advised him that K.J. had a statutory right to audiotape a segment of the examination involving a test that Nair claimed was proprietary.

On approximately July 31, 2015, LAUSD brought an ex parte application for monetary, issue, and terminating sanctions against K.J. and/or Carrillo. K.J. opposed the motion, and a series of briefs and supplemental briefs from both parties followed, supported by, inter alia, letters from or declarations by Dr. Nair, Nair's office manager, attorney Carrillo, and K.J.'s mother, as well as transcripts of portions of the audiotaped neuropsychiatric examination.

On September 16, 2015, the trial court issued to Carrillo an order to show cause (OSC) why he should not be adjudged guilty of contempt for willfully disobeying the court's July 15, 2015 order. The court's OSC was accompanied by the trial judge's three-page declaration explaining that Carrillo's statements at Dr. Nair's office "could be a willful violation" of its order. Because

a factual dispute existed regarding what actually occurred, the court ordered an evidentiary hearing.

On September 30, 2015, the evidentiary hearing transpired and the court found Carrillo was guilty of contempt. The court further stated, "I'm going to allow [LAUSD] to make an application for reasonable attorney's fees and costs associated with the contentious conduct on July 28th, 2015."

Accepting the trial court's invitation, on approximately October 2, 2015 LAUSD moved for sanctions against Carrillo for violating the court's July 15, 2015 order. K.J. opposed the sanctions motion.

On October 13, 2015, the trial court issued a written order finding Carrillo guilty of deliberate, willful, and premeditated disobedience in violation of its order that Dr. Nair's questioning of K.J. was not to be limited. The court opined that Carrillo's conduct at the neuropsychiatric examination was "a flagrant violation" of the court's ruling denying the motion for a protective order. The court imposed a 24-hour jail sentence and a $750 fine on Carrillo. The written order additionally stated that LAUSD "may make application for Fees and Costs associated with the Order to Show Cause re Contempt of Court issued to Luis A. Carrillo on September 16, 2015 and the Hearing on September 30, 2015."

On October 23, 2015, Carrillo challenged the contempt order in a petition for a writ of habeas corpus filed with this court, in the related proceeding of *In re Carrillo,* B267743. On October 26, 2015, we issued an order staying the trial court's October 13, 2015 order.

On or about November 9, 2015 LAUSD filed a supplemental motion for sanctions in the trial court. That motion

sought to recover "direct fees and costs associated with [the neuropsychiatric examination] issue, and the Contempt Hearing," including costs for Nair's and the office manager's appearance at the contempt hearing. In total, LAUSD sought $100,000 from Carrillo and his law office, comprised of $52,247.41 in fees and costs and $47,752.59 "in sanctions to deter future misconduct."

On November 19, 2015, the trial court granted LAUSD's sanctions motion in part, ordering Carrillo and his law firm to pay to LAUSD fees and costs of $16,111. The court explained the only issue it considered was "the issue of compensation . . . that should be . . . awarded to [LAUSD] because of the conduct that occurred" at the neuropsychiatric examination; "anything that happened working up to the [examination]" was excluded, as were costs related to the examination that would have been "incurred anyway." Apparently included in the $16,111 were fees related to the contempt hearing. Counsel for LAUSD queried whether the court's order covered fees and costs expended in regard to both the discovery dispute and the contempt hearing. The court replied that its order covered the "[t]otality." In response to a similar inquiry from K.J.'s counsel, the court clarified, "It's not so much for the contempt, it's for the extra work that was created by a discovery problem. . . . I am not looking at this as contempt sanctions. I mean, it's arising out [of] that incident and it came up in connection with a contempt hearing, but it's really a motion for interference with [the] discovery process. And that's why I think it's allowable." When K.J.'s counsel pointed out that this court had issued a stay order, the trial court explained: "This is different." "[T]his is intended to compensate [LAUSD] for extra work that was incurred in what I viewed as being an obstruction of the discovery process whether

or not it was contemptuous. [¶] So, this particular decision will stand, in my view, regardless of what the appellate decision is." "I'm not penalizing someone. [¶] . . . [¶] There is no penal component on this award."

On December 1, 2015, the trial court issued a written order on the motion. It required that "Luis A. Carrillo, individually, and/or the Law Offices of Luis A. Carrillo, jointly and severally," pay $16,111 to LAUSD.

On January 8, 2016 we issued a *Palma* notice[2] to the trial court. Treating the habeas petition as a petition for a writ of prohibition, we concluded there was not substantial evidence to establish beyond a reasonable doubt that Carrillo had willfully disobeyed the trial court's order of July 15, 2015. Thus, the trial court lacked jurisdiction to enter the October 13, 2015 contempt order and was required to find Carrillo not guilty. In light of this "clear legal error," we notified the parties of our intention to issue a peremptory writ of mandate.[3]

On January 14, 2016, the trial court indicated its intent to issue a new order finding Carrillo not guilty of contempt. On January 29, 2016, the trial court vacated its October 13, 2015 order and issued a new order finding Carrillo not guilty of deliberate, willful and premeditated disobedience of a court order. It further stated: "The Court's new order does not in any way reverse or change the Court's previous order, dated December 1, 2015, awarding sanctions totaling $16,111.00 to LAUSD, based

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2 *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

3 We grant K.J.'s request that we take judicial notice of records in *In re Carrillo,* B267743. (Evid. Code, §§ 452, 453, 459.)

upon its finding that he [Carrillo] had violated discovery statutes and the Court's Rulings in that regard."

On February 4, 2016, we dismissed *In re Carrillo* as moot and vacated the stay.

On January 26, 2016, K.J. filed a notice of appeal. (Code Civ. Proc., § 904.1, subd. (a)(12).) The notice of appeal listed only K.J. as the appellant.

CONTENTIONS OF THE PARTIES

K.J. seeks reversal of the portions of the trial court's December 1, 2015 order awarding LAUSD fees and costs relating to the contempt proceeding. She argues that the order was void because it violated our temporary stay order. Further, she argues, even if the order was not void, the trial court abused its discretion by (1) ordering fees and costs related to the contempt proceeding, given that its order finding Carrillo in contempt was vacated; (2) ordering sanctions not authorized by the pertinent discovery statutes; and (3) ordering fees and costs LAUSD had not yet incurred.

LAUSD, on the other hand, argues that K.J. lacks standing to bring this appeal; the record on appeal is insufficient because it does not include K.J.'s motion for a protective order, which "might well provide a fuller and more complete picture of the basis" for the trial court's ruling; our stay order did not stay *all* proceedings in the underlying case; and the monies awarded were proper discovery sanctions.

LAUSD's first contention has merit. Accordingly, we do not reach the parties' other contentions, and order the appeal dismissed.

DISCUSSION

Code of Civil Procedure section 904.1, subdivision (a)(12), provides that an appeal may be taken from "an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)." (Code Civ. Proc., § 904.1, subd. (a)(12); *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 868.) However, because K.J. was not sanctioned, and attorney Carrillo has not appealed, we lack jurisdiction to review the sanctions ruling. (*People v. Indiana Lumbermens Mutual Ins. Co.* (2014) 226 Cal.App.4th 1, 10 (*Indiana Lumbermens*); *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42 (*Calhoun*); *In re Marriage of Knowles* (2009) 178 Cal.App.4th 35, 38, fn. 1; *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 761-762, fn. 12; but see *Kane v. Hurley* (1994) 30 Cal.App.4th 859, 861, fn. 4.)

Our decision in *Indiana Lumbermens* is controlling. There, a surety company moved to set aside a summary judgment on a forfeited bail bond. (*Indiana Lumbermens, supra,* 226 Cal.App.4th at p. 3.) In its postjudgment order denying Indiana's motion to set aside the summary judgment, the trial court sanctioned Indiana's attorney, Rorabaugh, for making an allegedly misleading statement in a reply brief. On appeal, Indiana contended the sanctions order was erroneous. (*Id.* at p. 10.) We explained: "We lack jurisdiction to review the sanctions ruling because the sanctioned attorney, Rorabaugh, did not appeal. The sole appellant is Indiana, the defendant surety. However, Indiana is not aggrieved by the sanctions ruling because it was not ordered to pay sanctions (Code Civ. Proc., § 902), and it cannot appeal the sanctions award on Rorabaugh's behalf." (*Ibid.*)

We observed that *Calhoun* was directly on point. The appellate court in *Calhoun* held it lacked jurisdiction to review a sanctions ruling because "the purported appeal is not by the sanctioned attorney, Michael Calhoun, but by the plaintiff, George Calhoun. [Former s]ubdivision (k) of section 904.1[4] authorizes an appeal of a sanction ruling by the party against whom the sanctions were imposed. [Citation.] Thus, any right of appeal was vested in Michael, not George. Had Michael included himself as an additional appellant in George's notice of appeal, we could have liberally construed the notice of appeal in favor of its sufficiency [citations], but Michael did not do so. Absent any attempted appeal by the sanctioned party, the sanction ruling is not ... reviewable." (*Calhoun, supra,* 20 Cal.App.4th at p. 42; accord, *In re Marriage of Knowles, supra,* 178 Cal.App.4th at p. 38, fn. 1 ["[w]hen a sanctions ruling is imposed only upon a party's attorney, the attorney is the aggrieved party with the right to appeal"].)

Here the court's sanction order was imposed only against attorney Carrillo and his law firm, not against K.J. Thus, Carrillo, not K.J., is the aggrieved party. But Carrillo is not a party to this appeal. The notice of appeal states that "K.J., a minor through her guardian ad litem, Erick J[.]," appeals the order. K.J.'s opening brief states that "K.J. appeals the Superior Court's December 1, 2015 Order erroneously awarding LAUSD $16,111.00 in fees and costs." Accordingly, as in *Indiana*

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4 See now Code of Civil Procedure section 904.1, subdivisions (a)(12) and (b). (*Indiana Lumbermens, supra,* 226 Cal.App.4th at p. 10, fn. 7.)

Lumbermens and *Calhoun,* we lack jurisdiction to review the sanctions order.

K.J.'s arguments to the contrary do not compel a different conclusion. She attempts to distinguish *Indiana Lumbermens* and *Calhoun* by suggesting that the problem in those cases was that the appellants' and the attorneys' claims were commingled, whereas here, no such commingling exists. But this was simply not the basis for the appellate courts' holdings in those cases. Both clearly hold that only the aggrieved party may appeal.

K.J. next argues that any "violation" is merely "technical and should not preclude this Court from hearing the merits" of the case. She observes, correctly, that it " 'is and has been the law of this state that notices 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 the respondent could not possibly have been misled or prejudiced.' " (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1249; Cal. Rules of Court, rule 8.100(a)(2).) Here, she argues, it is clear what order is being appealed and LAUSD cannot have been misled. That may be so, but in our view the weight of authority counsels against stretching the liberal construction requirement so far as to deem a notice of appeal to include an unnamed party.[5]

K.J.'s citation to *Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, is unavailing. There, the trial court dismissed the plaintiff's personal injury complaint and imposed sanctions on her attorney, Alden. But both the plaintiff and the attorney appealed. (*Id.* at

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5 *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967 allowed a client to file an appeal of a sanction award that was ordered jointly against both the client and the attorney. (*Id.* at pp. 970, 972-974.) That is not the situation here.

p. 494 ["Alden also appeals, contending the trial court's imposition of monetary sanctions was improper"].) In considering whether the attorney had standing to appeal, the court noted that although Moyal was the only plaintiff at the trial court level, attorney Alden included himself as an additional appellant in the notice of appeal. (*Id.* at p. 497.) The attorney had a "distinct and separate right to appeal [the sanctions order] as a collateral matter." (*Ibid.*) The court observed that "[a]lthough on a collateral appeal it would be the better practice for an attorney to file a separate notice of appeal, since he or she is not a party to the action below," given the directive in favor of liberal construction and the policy in favor of hearing appeals on the merits, the attorney had standing. (*Ibid.*) In contrast, the problem here is not that Carrillo failed to file a separate notice of appeal; he has not filed a notice of appeal *at all*. Under these circumstances the appeal must be dismissed.

DISPOSITION

K.J.'s purported appeal from the trial court's December 1, 2015 order is dismissed. Respondent LAUSD to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

(PROOF OF SERVICE - 1013A(3))

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Fourth Floor, Los Angeles, California 90017.

On April 3, 2017, I served the foregoing documents described as: PETITION FOR REVIEW on interested parties in this matter by placing a true copy in a sealed envelope addressed as follows:

Court of Appeal State of California Second Appellate District Ronald Reagan Sate Building 300 South Spring Street, 2nd Floor Los Angeles, CA 90013	John M. Coleman Coleman & associates 111 S. Arroyo Parkway, Suite 442 Pasadena, CA 91105
Los Angeles County Superior Court Compton Courthouse Department B 200 West Compton Blvd. Compton, CA 90220	Bruce T. McIntosh 1055 E. Colorado Blvd. Suite 500 Pasadena, CA 91106

(BY MAIL) _X_ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service made pursuant to C.C.P. § 1013(a) should be presumed invalid if postal cancellation date of postage meter date is more than one day after date of deposit for mailing in affidavit.

(**STATE**) __X__ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 3rd day of April 2017, in Los Angeles, California.

/s/ Martha Rodriguez