Case No. S241057
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.J., A MINOR, BY HER GUARDIAN AD LITEM, ERICK JIMINEZ,
PETITIONER/PLAINTIFF

LUIS A. CARRILLO
Petitioner/Objector

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al
Respondents

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B269864
Los Angeles Superior Court, Case No. BC505356
(The Hon. William P. Barry)

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA STATUTORY AUTHORITY

CALIFORNIA RULES AUTHORITY

CALIFORNIA DECISIONAL AUTHORITY

TREATISES

ISSUE PRESENTED

In his Petition for Review, filed by Mr. Carillo on or about April 3, 2017, it is clear that the petition did not include as a petitioning party the original appellant, the Plaintiff in the underlying action, K.J., a minor. The only person filing the Petition for Review was and is attorney Luis Carrillo.

Petition for Review, pg. 5.

In that Petition, Mr. Carillo presented as his sole issue for this Court the following:

"ISSUES (SIC) 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."

However, in Mr. Carillo's more recently filed Opening Brief on the Merits, filed on or about July 13, 2017, completely new language appears under the same heading.

As now phrased, the new and different Issue Presented is:

"ISSUE PRESENTED

"Does the Court of Appeal lack jurisdiction over an appeal from an order imposing

sanctions on an attorney if the notice of appeal is brought in the name of the client rather than in the name of the attorney?"

No explanation has been offered by Mr. Carillo's counsel as to why the Issue Presented is no longer the liberal construction rule, but is now the Issue of whether the Court of Appeal lacked jurisdiction to consider the original appeal in this case.

SUMMARY OF ARGUMENT

Respondent contends that the Court of Appeal below properly determined that it did not have jurisdiction to consider the appeal below, despite Mr. Carrillo's urging that it do so, as no proper appeal was originally filed by the "aggrieved party".

Respondent also contends that the rule of liberal construction of notices of appeal should not have been applied to save the original appeal in this case, and that there is no conflict between the cases cited by petitioner and those relied upon by the Court of Appeal below.

Finally, the Court of Appeal's decision below should be affirmed, as the Court fully considered Mr. Carrillo's arguments regarding the rule of liberal construction, and instead unanimously chose to uphold the legal principle of stare decisis, relying on a case that the exact same division of the Second District –Division Three --decided two years earlier, the case of People v. Indiana Lumbermens Mutual Insurance Company (2014) 226 Cal. App. 4th 1, a case whose facts are exactly the same as in Mr. Carrillo's case.

It should be noted that petitioner in his Petition for Review has raised the purported existence of issue of a conflict between the "majority view" and the "minority view" of different

courts of appeal regarding the application of the rule of liberal construction. Petition for Review, pp. 10-14

However, that issue was raised only in Petitioner's Petition for Review, but is not mentioned or discussed in Petitioner's Opening Brief on the Merits.

In any event, respondent contends that it is simply a non-issue, as the cases cited and discussed by petitioner may all be explained and harmonized , without offense to the rule of liberal construction.

A close analysis of all of the cases cited by the Appellant in the Petition for Review and in his Opening Brief, will show a very regular and systematic (albeit often unexpressed) rationale for deciding whether or not to construe notices of appeals to include parties who were not originally appellants in those cases.

Nothing in petitioner's Opening Brief, or in the facts of his case itself, warrant a reversal of the decision of the Court of Appeal.

1. STATEMENT OF THE CASE AND FACTS

As previously found by the Court of Appeal in its Opinion below, the operative and relevant facts on this Petition for Review are as follows (all references are to the Court of Appeal Opinion filed February 23, 2017 ("Opinion"):

The record on appeal does not contain a copy of the complaint, but there is no dispute that the originally named Plaintiff, K.J., filed a negligence complaint against the Respondent. (Opinion, fn. 1)

On July 15, 2015, the trial court denied Plaintiff's motion for a protective order and

ordered Plaintiff to submit to a neuropsychiatric examination. The trial court declined to impose limitations on the scope of that examination. Opinion, pg. 2.

During the examination Mr. Carillo allegedly sought to impose limitations on the examination, and the examination was not completed. Opinion, pg. 3.

Thereafter Respondent brought a ex parte application for monetary, issue and terminating sanctions against petitioner Mr. Carrillo.

After considering all of the papers involved in that dispute, the trial court issued to Mr. Carillo an order to show cause (OSC) why he should not be adjudged guilty of contempt, for a willful violation of the trial court's earlier order regarding the examination. Opinion, pg. 3.

On September 30, 2015, an evidentiary hearing was held, and Mr. Carillo was found guilty of contempt. He was later sentenced to 24 hours in jail and a $750.00 fine. Opinion, pg. 4.

On October 13, 2015, the trial court issued a written order finding Mr. Carillo guilty of contempt, for deliberate, willful, and premeditated disobedience of its prior order regarding the examination.

Ten days later, on October 23, 2015, Mr. Carillo challenged that order by filing a petition for a writ of habeas corpus with the Court of Appeal, which resulted in the Court of Appeal issuing a stay order on October 26, 2015.

The petition for a writ of habeas corpus was filed by Mr. Carillo only , the "party aggrieved" by the trial court's contempt order, and not by the Plaintiff, K.J. (Emphasis added). Opinion, pg. 4.

On November 9, 2015, Respondent Los Angeles Unified School District ("LAUSD")

filed a supplemental motion for discovery sanctions in the trial court, and on November 19, 2015, the trial court granted that motion in part, "ordering Mr. Carillo and his law firm, jointly and severally", to pay to LAUSD fees and costs of $16,111. (Emphasis added) Opinion, pg. 4-5.

The formal written order of the trial court confirming the amount of the sanctions was issued on December 1, 2015, and stated that the order for payment was directed against both "'Luis A. Carillo, individually, and/or the Law Offices of Luis A. Carillo, jointly and severally ." Opinion, pg. 6.

Following the issuance of a Palma notice by the Court of Appeal, on January 29, 2016, the trial court vacated its October 13, 2015 order of contempt, and found Mr. Carillo not guilty thereof. Opinion, pg. 6.

However, the trial court did not reverse or change its December 1, 2015 order, awarding sanctions of $16,111.00 to Respondent. Opinion, pg. 6.

On January 26, 2016, Plaintiff K.J. only filed a notice of appeal, pursuant to Code of Civil Procedure Section 904.1, subd. (a)(12) . Opinion, pg. 7.

Neither Mr. Carillo nor the Law Offices of Luis A. Carillo were named as appellants in that original appeal.

The Law Offices of Luis A. Carillo is still not named as an appellant in this case.

2. THE ANSWER TO THE ISSUE DIRECTLY PRESENTED IN MR. CARILLO'S OPENING BRIEF – DID THE COURT OF APPEAL LACK JURISDICTION TO DECIDE MR. CARILLO'S APPEAL? – IS CLEARLY "YES".

In its Opinion, below, the Court of Appeal addressed this issue directly. In its DISCUSSION, at page 8, it clearly stated the law, the applicable facts, and its ruling as follows:

> "Code of Civil Procedure Section 904.1(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 ($5,000.00)' (citations omitted). 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) 2256 Cal. App. 4th 1, 10 . . ."

The action of the Court of Appeal action could not have been more clearly explained: Mr. Carrillo did not file a timely appeal, and because he did not, the Court of Appeal had no jurisdiction to consider his arguments or to grant him any relief.

3. THE REAL ISSUE RAISED BY MR. CARILLO'S APPEAL – SHOULD THE RULE OF LIBERAL CONSTRUCTION OF NOTICES OF APPEAL HAVE BEEN APPLIED IN THIS CASE –MUST BE ANSWERED IN THE NEGATIVE.

Despite the Court of Appeal's dismissal of Mr. Carrillo's appeal, the Court below did consider Mr. Carillo's real argument. That argument, made both before the Court of Appeal and on this Petition, is that the Court of Appeal should have considered and granted his request that it use the rule of "liberal construction" of notices of appeal to "save" his appeal, and consider

the trial court's award of sanctions on the merits.

This the Court of Appeal below correctly declined to do.

Respondent submits that they declined to do so for a number of reasons beyond its reliance

on its own recent decision in the case of People v. Indiana Lumbermens Mutual case.

See discussion, infra, re the role of *stare decisis* in the Court of Appeal's decision.

Respondents submit that some of those reasons were obvious and were discussed in the Opinion, while others were not necessary to the decision but played (and play) a part in why the Court of Appeal decision below should be affirmed

First, the sole appealable issue--the sanctions order of the trial court --was Mr. Carillo's issue alone, and not a "commingled issue" that included an issue that was of interest to or affected the only named appellant, the Plaintiff K.J.

See Court of Appeal discussion at page 10 of its Opinion.

Second, and perhaps more importantly, the Court of Appeal declined to exercise its discretion in liberally constructing the notice of appeal in question because it believed:

> " . . . in our opinion, 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." (Emphasis added); Opinion, pg. 10.

To state the matter somewhat differently, it is one thing to liberally construe a notice of

appeal when determining (a) exactly what the appealable order or judgment is before the Court of Appeal, or (b) the exact scope of the issues that must be determined on the appeal.

But it is a far different matter to liberally construe a notice of appeal to consider the arguments and to award relief to a party who has simply not appealed at all.

This is especially true when the undisputed facts in the case show that there is only one and can only be one appellant with the right to appeal, because only one party is the "aggrieved party."

There is additional indirect support for this conclusion in the language of California Rules of Court, Rule 8.100, subd. (a) (1), where the rule of liberal construction is found.

That section states, in pertinent part:

> "(a) Notice of appeal
>
> (1) To appeal from a superior court judgment or an appealable order of a superior court, . . . an appellant must serve and file a notice of appeal in that superior court. The appellant or the appellant's attorney must sign the notice. (Emphasis added)
>
> (2) The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken . . ."

Pursuant to subsection (1), it is clearly the obligation of the appellant or the appellant's attorney to file a timely notice of appeal that names the proper appellant. Only after a proper notice of appeal has been filed, by a proper appellant – an "aggrieved party" – is the notice of appeal to be liberally constructed.

Following the statement of the rule of liberal construction, two examples of liberal construction are given in subsection 2 of the rule.

One is "positive" and one is "negative":

(1) The notice is sufficient if it identifies the particular judgment or order being appealed from (a positive statement); and

(2) A failure to specify the court to which the appeal is taken is not a defect (a negative statement).

Respondent submits that if the Judicial Council, authors of the California Rules of Court, wished to expand the rule of liberal construction to grant to the courts the right to consider the rights of non-parties to the appeal, they could have made that clear, but they have chosen not to do so.

Respondent further submits that they have not done so because of the pre-condition to the application of the rule – that an "aggrieved party" must have appealed. Sabi v. Sterling (2010) 183 Cal. App. 4th 916, 947.

That requirement may not be altered by the rule of liberal construction, as the Court of Appeal so stated in its Opinion, at page 10, supra.

4. THERE IS NO CONFLICT IN THIS CASE BETWEEN THE CASES CITED BY APPELLANT. WHICH APPLIED THE DOCTRINE OF LIBERAL CONSTRUCTION, AND THE CASES CITED WHICH DID NOT APPLY THE DOCTRINE OF LIBERAL CONSTRUCTION. THE DIFFERENCE IN THE

CASES LIES IN THE UNDERLYING FACTS OF EACH CASE.

As noted, above, in his Petition for Review, Petitioner raised a claim that certain "minority courts" are not properly applying the rule of liberal construction.

However, a careful analysis of the facts in each of the cases cited by Appellant, reveals either a fact pattern or legal principle that explains the different results in the cases.

Simply stated, in the cases in which claims of a non-appellant were allowed to be decided, there was another valid and proper appellant who also had issues that had to be determined by the Court of Appeal, or there was an issue of importance to the legal community that needed to be addressed.

In those cases where the claims of a non-appellant were not decided because the Court of Appeal determined that it lacked jurisdiction, the only "aggrieved party" before the Court was the party who had failed to file a notice of appeal in their own name.

The cases cited by petitioner as the "majority cases" are the following:

Kane v. Hurley (1994) 30 Cal. App. 4th 859;

Eichenbaum v. Alon (2003) 106 Cal. App. 4th 867;

Critzer v. Enos (2010) 187 Cal. App. 4th 1242

Moyal v. Lamphear 208 Cal. App. 3d. 491

Chung Sing v. Southern Pac. Co (1918) 178 Cal. 261

(This list includes cases cited in Petitioner's Petition for Review as well as Petitioner's Opening Brief on the Merits)

The Majority Cases

In each of the "majority cases", there was an additional appellant whose issues had to be decided by the Court of Appeal or an important issue of statutory interpretation that needed to be resolved.

1. In the case of Kane, like this case, the appeal was in the name of Fred Kane, but the true appellant was attorney Jack R. Willis. The Court of Appeal allowed Mr. Willis to be part of the case because Willis was ordered to pay sanctions to the trial court, and the Court of Appeal determined as a matter of first impression that Code of Civil Procedure 128.5 did not permit the trial court to receive such a payment. Kane, at 30 Cal. App. 4th 864.

In short, Kane was a case of first impression which the Court of Appeal decided to interpret the new statute in question.

Mr. Carrillo's case involved no such question of statutory interpretation.

2. In the case of Eichenbaum, supra, (as noted in footnote 5 of the Court of Appeal's decision), the sanction award was against both the client and the attorney, so that the client's appeal would have to be considered in any event.

That is not the case here.

3. In Critzer v. Enos, the issue regarding appealability involved not the issue of who was appealing, but the issue of what was the operative order the appellants were trying to appeal from. Critzer, 187 Cal. App. 4th 1242.

[Respondent submits that the only reason that this case has been cited by petitioner is because of the fact that the underlying order in Critzer contained the wrong caption and was filed in a related case in which no motion was pending. That unusual fact pattern allows petitioner in this case to argue that because the same facts exist an incorrect caption exist, the same result

should occur. However, the error in the caption of the appeals in both cases is not relevant to the Court's ultimate decision in Critzer.

Unlike Critzer, there is no question in this case as to which order of the trial court is being appealed from.

4. Moyal v. Lamphear 208 Cal. App. 3d. 491

The Court of Appeal in this case disposed of Moyal by noting, at page 10-11 of its Opinion, that both the Plaintiff and the attorney appealed in Moyal appealed, whereas in this case Mr. Carrillo did not, and Mr. Carrillo was the only party aggrieved by the trial court's ruling below.

Again, the court would have had to determine the Plaintiff's appeal in resolving Moyal.

5 Petitioner devotes almost three pages of its Petition for Review to the case of Chung Sing v. Southern Pac. Co (1918) 178 Cal. 261, a case decided almost a century ago.

The clear finding of the Supreme Court in that case was that one of the three true appellants–George W. Blackburn- was referred to by a completely different name– C.A. Burton- in the appellate proceedings. It was, as the court stated, done through

"inadvertence– a mere clerical misprison."

Chung Sing, supra, at 178 Cal. 263-264.

No such "clerical misprision" exists here.

And again, there were two other appellants in that case who were properly before the Court\

of Appeal, and whose appeals would have to be resolved.

The Minority Cases

The cases cited by petitioner as the "minority cases" are the following

People v. Indiana Lumbermens Mutual Insurance Company (2014) 226 Cal. App. 4th 1 and

Calhoun v. Vallejo City Unified School District (1993) 20 Cal. App. 4th 39

1. The first is People v. Indiana Lumbermens Mutual Ins. Co. (2014) 226 Cal. App. 4th. 1, a case decided by the very same division of the Court of Appeal that heard the underlying appeal in this case, and the case it relied upon to determine that it lacked jurisdiction to hear Mr. Carrillo's appeal. Opinion, pp. 9-10.

In that case appellant Indiana contended that the trial court lacked subject matter jurisdiction to enter summary judgment on a bail bond during the pendency of the appeal from the order denying Indiana's motion to vacate forfeiture, and that the trial court improperly imposed monetary sanctions on its counsel, Mr. Rorabaugh, for his improper Request for Judicial Notice.

Those facts mirror the facts in this case, in that Mr. Carrillo claims that the trial court improperly imposed the monetary sanctions in question during the pendency of an appeal.

However, that Mr. Carrillo's argument on the merits.

Just as the court in People v. Indiana Lumbermens declined to consider those facts because no appeal had been filed by the "aggrieved party", so to the same Court declined in this case to consider that issue because Mr. Carrillo did not file an appeal in this case. Mr Carrillo was treated exactly the same as that Mr. Rorabaugh was in the People v. Indiana Lumbermens Case.

The Court of Appeal below was entirely correct in applying the principle of the People v. Indiana case to the facts of this case.

2. The second case, Calhoun v. Vallejo City Unified School Dist. (1993) 20 Cal. App.

4th 39, 42, was considered by the Court of Appeal involved in this case when it decided People v. Indiana Lumbermens Mutual, supra, two years earlier, and deemed to be controlling.

The Court of Appeal, below, also reconsidered the Calhoun case in its Opinion in this case, and was not persuaded to reach a different decision by the facts in this case.

In affirming its application to this case, the Court of Appeal below also cited to the case of In re Marriage of Knowles (2009) 178 Cal. App. 4th, 35.

Interestingly, the Knowles case has been ignored by petitioner in both his Petition for Review as well as in his Opening Brief on the Merits.

The Court of Appeal noted quoted from In re Marriage of Knowles at page 9 of its Opinion:

"Absent any attempted appeal by the sanctioned party, the sanction ruling is not reviewable."

In short, all three of the cases cited by the Court of Appeal in this case are consistent with prior case law that contain the same dispositive facts as this case.

None of these case constitute a "minority view" of the rule of liberal construction, and thus there is no necessity to "secure uniformity of Decision. Petition for Review, pg 6.

5. **THE COURT OF APPEALS DECISION, BELOW, WAS CLEARLY BASED UPON THE PRINCIPLE OF STARE DECISIS.**

As stated in California Forms of Pleading and Practice, Appeals, at Section 41.31., p. 41-60:

"*Stare decisis* is also a fundamental jurisprudential policy that prior applicable

precedent must be followed by the same court, even if the principle of law is considered anew by that court. It is based on the assumption that certainty, predictability and stability in the law are major objectives of the legal system. . . .The principle also has special force when applied to statutory interpretation, in that the Legislature is free to alter what the courts have done. (Citations omitted)."

As discussed, supra, the Court of Appeal below was following its own precedent when presented with facts that mirrored exactly those in a decision that it had rendered only two years before, and which relied upon earlier applicable precedent.

Because the rule of *stare decisis* must be followed by the same court, the Court of Appeal below was bound the follow the same principles of law to insure certainty, predictability and stability in the law, which are major objectives of the legal system.

Respondent respectfully submits that the doctrine of *stare decisis* should control over the rule of liberal construction because *stare decisis* provides a complete picture of the facts, and the law that has been applied to those facts to reach a final decision that is binding on courts in the future.

On the other hand, the rule of liberal construction is simply a rule to be applied to a particular set of facts, to determine exactly what is being appealed from n the case.

Here, the rule of liberal construction was clearly considered by the Court of Appeal below, which declined to invoke it to save Mr. Carrillo's appeal.

It did so because of not one but 3 clear-cut cases that had previously ruled that the merits of a non-appealing party may not be considered.

6. **THE ORDER APPEALED FROM IS PRESUMED TO BE CORRECT.**

The most fundamental rule of appellate review is that a judgment or order that is appealed from is presumed to be correct. Denham v. Superior Court (1970) 2 Ca. 3d 557, 564. Any ambiguity in the record is resolved in favor of the judgment being appealed from.

The burden is on the Appellant to overcome this presumption of correctness. Bain v. Tax Reducers, Inc. (2013) 219 Cal. App. 4th 110, 145.

This the petitioner has failed to do.

7. **CONCLUSION**.

For the reasons set forth herein, petitioner's appeal to this Court should be denied, with respondent granted its costs in this case.

DATED: August 11, 2017

Respectfully submitted,

JOHN M. COLEMAN,
Attorney for Defendant and Respondent Los Angeles Unified School District

CERTIFICATE OF WORD COUNT

(California Rules of Court, Rule 8.204(c) (1)

The text of this Brief consists of 4,727 words as counted by the Corel Word Perfect-version 12 word-processing program used to generate the brief.

Dated: August 11, 2017

JOHN M. COLEMAN,

Attorney for Defendant and Respondent
Los Angeles Unified School District

PROOF OF SERVICE

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: 202 S. Lake Avenue, #330, Pasadena, California 91101.

On August 14, 2017, I caused to be served on the within parties in this action a copy of the following papers: RESPONDENT'S ANSWER BRIEF ON THE MERITS on the within parties in this action by serving a true copy upon the party addressed below:

Hon. Judge William P. Barry
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[x] BY MAIL I am "readily familiar" with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United State Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Los Angeles, California.

Executed on August 14, 2016, at Pasadena, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

OLVIA ROBLES