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SUPREME COURT
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Case No. S241057

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.J., A MINOR, BY HER GUARDIAN AD LITEM, ERICK JIMENEZ,

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 County Superior Court, Case No. BC505356
(The Honorable William P. Barry)

PETITIONER'S REPLY BRIEF ON THE MERITS

Kelly C. Quinn, Esq. (SBN 197697)
Mark W. Allen, Esq. (SBN 293155)
WERKSMAN JACKSON HATHAWAY & QUINN, LLP
888 West Sixth Street, Fourth Floor
Los Angeles, California 90017
Telephone: (213) 688-0460
Facsimile: (213) 624-1942
Attorneys for Petitioner and Objector
Luis A. Carrillo

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I. INTRODUCTION

The instant matter arises from the appeal of an erroneous trial court order imposing $16,111.00 in monetary sanctions against Mr. Luis A. Carrillo, the attorney for K.J., the minor plaintiff in the underlying matter. The notice of appeal filed with the Court of Appeal maintained the same case name and caption as at the trial level and notified respondent, the Los Angeles Unified School District ("LAUSD"), that the appeal was being made pursuant to Code of Civil Procedure section 904.1(a)(3)-(13), from the trial court order entered on December 1, 2015.

In his Opening Brief filed with the Court of Appeal, Mr. Carrillo's arguments concerned only the $16,111.00 in sanctions imposed by the trial court against Mr. Carrillo. In its Respondent's Brief, LAUSD substantively responded to Mr. Carrillo's arguments and added that the appeal should be dismissed because the case caption on the Notice of Appeal listed only K.J. as the appealing party, and K.J. lacked standing to bring the appeal on Mr. Carrillo's behalf. In its February 23, 2017 opinion, the Court of Appeal dismissed Mr. Carrillo's appeal, finding that it lacked jurisdiction to review the sanctions order because Mr. Carrillo, not K.J., was the aggrieved party, but was not the party listed on the notice of appeal.

Mr. Carrillo subsequently petitioned for this Court to review the Court of Appeal's decision. In granting Mr. Carrillo's Petition for Review, the sole question posited by this Court was whether the Court of Appeal lacks 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? In its

Respondent's Answer Brief on the Merits (hereinafter "Answer Brief"), however, Respondent LAUSD veers from this issue while attempting to address Petitioner's arguments in his Opening Brief on the Merits.[1] For the reasons set forth below, the arguments brought forth by Respondent are either well beyond the scope of this Court's inquiry or without merit. Consequently, this Court should find that the Court of Appeal has 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.

II. ARGUMENT

The question posed by this Court is whether the Court of Appeal lacks 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? In its Answer Brief, Respondent LAUSD vehemently asserts that the Court of Appeal lacks jurisdiction under these circumstances. To support its position, Respondent raises the following issues: (1) Respondent takes issue with the wording of the "issue presented"; (2) Respondent

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[1] This Reply Brief on the Merits is confined to recent developments in law and matters address in Respondent's Answer Brief on the Merits on which Petitioner believes further discussion would be helpful to this Court. The absence of a point from this Reply Brief on the Merits means only that it falls into neither of these categories. Petitioner respectfully requests that the failure to specifically address a particular argument should not be considered a concession, abandonment, or forfeiture of the claim. (See *People v. Hill* (1992) 3 Cal.4th 959, 995, fn. 3, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1071.)

improperly opposes the Petition for Review, already granted by this Court; (3) Respondent contends that this Court must give deference to the lower appellate court's decision; and (4) that California Rules of Court, rule 8.100, subdivision (a)(2), prohibits the application of the doctrine of liberal construction in the instant case. For the reasons set forth below, Respondent's arguments are unpersuasive and without merit.

A. THIS COURT PRESENTS THE ISSUE TO BE BRIEFED AND ARGUED

Respondent claims that the issue presented in Petitioner's Opening Brief on the Merits contains "completely new language" compared to the issue presented in the Petition for Review, implying Petitioner deceptively changed the issue to be resolved by this Court. (See Answer Brief at pp. 5-6 ["No explanation has been offered by Mr. Carrillo's counsel as to why the Issue Presented is no longer the liberal construction rule . . . ."].) Respondent's perception is incorrect, as this Court "may specify the issues to be briefed and argued." (Cal. Rules of Court, rule 8.516, subd. (a)(1).) The California Supreme Court's case summary page for the instant matter clearly sets forth the issue to be briefed and is identical to the issue presented in Petitioner's Opening Brief on the Merits in accordance with California Rules of Court, rule 8.520, subdivision (b)(2). (See Opening Brief at p. 5.) Petitioner has properly stated and addressed the issue on review as presented by this Court. In sum, Respondent's implication of impropriety is incorrect and without basis in law or fact and should be wholly disregarded.

B. RESPONDENT LAUSD IMPROPERLY ARGUES AGAINST THE PETITION FOR REVIEW, WHICH THIS COURT ALREADY GRANTED

Respondent takes issues with whether this Court should have granted Petitioner's Petition for Review. (See Answer Brief at pp. 13-18.) Petitioner filed his Petition for Review on April 4, 2017. (See Petition for Review.) Respondent had until April 24, 2017 to file its Answer to the Petition for Review. (See Cal. Rules of Court, rule 8.500, subd. (e)(4) ["Any answer to the petition must be served and filed within 20 days after the petition is filed"].) Respondent failed to file any Answer to the Petition for Review. This Court granted the Petition for Review on June 14, 2017. Now, Respondent argues that the Petition for Review should not have been granted, nearly two months after this Court had already granted it.

Specifically, Respondent contends that this Court's review is unnecessary to secure uniformity of decision, and dedicates six pages attempting to reconcile *Lumbermens Mutual Insurance Company* (2014) 226 Cal.App.4th 1 ("*Lumbermens*") and *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39 ("*Calhoun*") with *Kane v. Hurley* (1994) 30 Cal.App.4th 859 ("*Kane*"), *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967 ("*Eichenbaum*"), *Critzer v. Enos* (2010) 187 Cal.App.4th 1242,[2] *Moyal v. Lanphear* (1989) 208

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[2] Respondent seems to misunderstand the proposition for which *Critzer v. Enos*, *supra*, 187 Cal.App.4th 1242 is cited by Petitioner in the Opening Brief on the Merits (Answer Brief at p. 15); *Critzer* is cited simply for the proposition that liberal construction of a notice of appeal is appropriate where "it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (See Opening Brief at pp. 13, 21.)

Cal.App.3d 491, 497 ("*Moyal*"), and *Chung Sing v. Southern Pac. Co.* (1918) 178 Cal. 261 ("*Chung Sing*"), all of which were cited in the Petition for Review. Respondent discusses the aforementioned cases and concludes that there is no conflict between them with regard to liberally construing the notice of appeal. (See Answer Brief at pp. 13-18.) Accordingly, Respondent asserts that this Court's review is unnecessary to secure uniformity of decision. (See *id.* at p. 18 ["thus there is no necessity to 'secure uniformity of Decision.[']"].) That is, Respondent's position addresses whether this Court should have granted the Petition for Review. (See Cal. Rules of Court, rule 8.500, subd. (b)(1).) Not only is Respondent's reconciliation of these cases untenable, but the proposition for which they are offered is well beyond the scope of this Court's review at this stage.

In sum, Respondent's argument against the Petition for Review is non-responsive to this Court's inquiry, meritless, and untimely. Consequently, this argument must be disregarded.

C. RESPONDENT'S ARGUMENTS CONCERNING DEFERENCE TO THE LOWER APPELLATE COURT'S DECISION ARE MERITLESS

Respondent sets forth three arguments in its Answer Brief that advocate for this Court to essentially give deference to and adopt the lower appellate court's determination that it lacked jurisdiction to resolve Mr. Carrillo's appeal on its merits. Particularly, Respondent contends that "the judgment or order that is appealed from is presumed to be correct" (Answer Brief at p. 20), that the lower appellate court's determination is supported by the principle of stare

decisis (*id.* at p. 18-19), and Respondent adopts the lower appellate court's rationale to argue that the Court of Appeal does not have jurisdiction over the circumstances of the instant case. (*Id.* at pp. 9-12.) For the forgoing reasons, each of these arguments fail.

1. The Issue Before this Court Is Reviewed De Novo, and Deference Is Not Given to the Lower Appellate Court's Decision in the Instant Case

Respondent claims that a judgment or order that is appealed from is presumed to be correct and that the burden is on Petitioner to overcome this presumption of correctness. (Answer Brief at p. 20, citing *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [concerning whether the trial court abused its discretion in denying a motion to dismiss a plaintiff's amended complaint] and *Bain v. Tax Reducers, Inc.* (2013) 219 Cal.App.4th 110, 145 [review denied and ordered not to be officially published].) Respondent is incorrect, as the issue before the Court is a question of jurisdiction, "in essence, one of law" that is reviewed de novo. (See *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 568, citing *Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267.) Consequently, a presumption of correctness is not given to the lower appellate court's finding.

2. The Principle of Stare Decisis Does Not Support a Conclusion that the Court of Appeal Lacks Jurisdiction Over an Appeal in the Instant Circumstances

Relying on the principal of stare decisis, Respondent argues that the lower appellate court was correct in determining that it did not have jurisdiction to resolve Mr. Carrillo's appeal on the merits. (See Answer Brief at pp. 18-19.) According to Respondent, "[T]he Court

of Appeal was following its own precedent[3] . . . that it had rendered only two years before" and "*stare decisis* must be followed by the same court." (*Id.*) However, reliance on the part of Division Three of the Second Appellate District of the Court of Appeal upon its own previous decision is not dispositive on review before this Court.

Respondent also confusingly contends 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." (Answer Brief at p. 19.) Respondent presumably argues that, under the doctrine of stare decisis, the Court of Appeal's decision in *Lumbermens*, *supra*, 226 Cal.App.4th 1 should control and bind courts in the future. *Lumbermens*, however, is not binding upon this Court, as the principle of stare decisis requires that courts "exercising inferior jurisdiction . . . accept the law declared by courts of superior jurisdiction." (*Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347, 353.) Furthermore, Respondent cannot argue that the Court of Appeal's decision in *Lumbermens* overrules its decision in *Kane*, *supra*, 30 Cal.App.4th 859, as one appellate district is not permitted to overrule a decision of another appellate district. (See *Garza v. Asbestos Corp., Ltd.* (2008) 161 Cal.App.4th 651, 659, fn. 5 ["As a court of equal dignity, we are certainly free to disagree with our colleagues in Division One, and may even decline to follow

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[3] Here, Respondent refers to the underlying decision rendered by Division Three of the Second Appellate District of the Court of Appeal and in the primary case upon which it relies, *Lumbermens*, *supra*, 226 Cal.App.4th 1.

them. However, principles of stare decisis do not permit us to 'overrule' their decision . . . ."].)

Alternatively, to the extent this convoluted assertion can be interpreted to mean that this Court should adopt the lower appellate court's position on applying the doctrine of liberal construction to a notice of appeal under the instant circumstances, Mr. Carrillo relies on the arguments set forth below and in his Opening Brief on the Merits.

3. The Lower Appellate Court's Rationale Does Not Support a Conclusion that the Court of Appeal Lacks Jurisdiction Over an Appeal in the Instant Circumstances

In its Answer Brief, Respondent relies on the lower appellate court's reasoning in deciding that it lacked jurisdiction to resolve Mr. Carrillo's appeal on the merits. (See Answer Brief at pp. 9-11.) Essentially, Respondent circularly argues that the Court of Appeal does not have jurisdiction over Mr. Carrillo's appeal because the Court of Appeal reasoned in its opinion that it has no jurisdiction under the circumstances of this case. (Answer Brief at pp. 10.)

However, as explained in Petitioner's Opening Brief on the Merits, the Court of Appeal has jurisdiction over an appeal of an order imposing sanctions on an attorney where the notice of appeal omits the sanctioned attorney's name. The California Rules of Court mandate that the Court of Appeal must liberally construe the notice of appeal, and should have done so in the instant matter because it was clear to Respondent that Mr. Carrillo was the actual appellant, the order that was being appealed, and Respondent could not have been misled or prejudiced. Additionally, liberally construing the notice of appeal to include the name of an omitted party is not novel or without

precedent, as the Court of Appeal had done so in *Kane*, *supra*, 30 Cal.App.4th 859 and *Eichenbaum*, *supra*, 106 Cal.App.4th 967, and this Court had similarly done so in *Chung Sing*, *supra*, 178 Cal. 261.[4]

Respondent counters that the lower appellate court considered whether it should liberally construe the notice of appeal and declined to do so. (Answer Brief at p. 11.) Interpreting the lower appellate court's opinion, Respondent asserts that "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 determine 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." (Answer Brief at pp. 11-12.) Yet, Respondent provides no analysis as to the significance of that distinction while also failing to understand that very rationale upon which it is relying is the basis for the Court's de novo review.

Additionally, Respondent disregards that when deciding whether to liberally construe a notice of appeal, a reviewing court should consider whether it was "reasonably clear 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.) Instead, Respondent seems to argue that a reviewing court should consider whether a respondent would be misled or prejudiced only in a single, isolated circumstance—when it is unclear which order is being appealed. (See Answer Brief at pp.

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[4] *Kane*, *Eichenbaum*, and *Chung Sing* have, in relevant part, been briefed and discussed in Petitioner's Opening Brief on the Merits.

15-16.) Again, Respondent does not provide any analysis as to why an appellate court would not weigh those considerations under the facts of the instant case. Further, Respondent fails to explain why weighing those considerations is not warranted in the instant case given the "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, supra*, 208 Cal.App.3d at p. 497.)

In sum, Respondent's reliance on the lower appellate court's rationale to support its claim that the Court of Appeal does not have jurisdiction over an appeal under the circumstances of this case is unavailing.

D. RESPONDENT'S SINGLE ARGUMENT BROUGHT UNDER A DE NOVO REVIEW STANDARD RELIES ON A MISSTATEMENT OF CALIFORNIA RULES OF COURT, RULE 8.100, SUBDIVISION (A)(2)

Respondent sets forth a single argument under a de novo review standard, as opposed to Respondent's assertion, above, that deference should be afforded to the lower appellate court's decision. Specifically, Respondent argues that the Court of Appeal does not have jurisdiction over an appeal under the instant circumstances because the authors of the California Rules of Court have delineated specific circumstances in which to apply the doctrine of liberal construction. (Answer Brief at p. 13.) Particularly, Respondent, utilizing the maxim *expressio unius est exclusio alterius*, contends that the instant facts concerning the notice of appeal is not described in California Rules of Court, rule 8.100, subdivision (a)(2), as a situation

in which the doctrine of liberal construction applies. (See *id.* ["[I]f the Judcial Council . . . wished to expand the rule of liberal construction . . . they could have made that clear, but they have chosen not to."].) Respondent's contention, however, fails, as Respondent egregiously misreads the clear and plain language of California Rules of Court, rule 8.100, subdivision (a)(2).

California Rules of Court, rule 8.100, subdivision (a)(2), provides:

> 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; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

Respondent reads this language as providing "two examples of liberal construction," one described as "positive" and the other "negative." (Answer Brief at p. 13.) The "positive" example explains when the notice of appeal is sufficient, while the "negative" example purportedly explains when the notice of appeal is not deficient. (*Id.*) According to Respondent, the "positive" example of when the doctrine of liberal construction applies to a notice of appeal is set forth in the first sentence of Rule 8.100, subdivision (a)(2), which provides that "(1) [t]he notice is sufficient if it identifies the particular judgment or order being appealed from." (*Id.*) Respondent next claims that the "negative" example of the doctrine of liberal construction is "(2) [a] failure to specify the court to which the appeal is taken *is not a defect.*" (*Id.*, emphasis added.). Respondent asserts that the maxim *expressio unius est exclusio alterius* precludes liberal

construction of a notice of appeal under the circumstances of the instant case because the Rules of Court already provide for all the circumstances where the notice of appeal is "not a defect." Troublingly, the clause "is not a defect" is clearly absent in the language of Rule 8.100, subdivision (a)(2).

In sum, Rule 8.100, subdivision (a)(2), does not set forth any exhaustive list of when a notice of appeal "is not a defect" or where the doctrine of liberal construction should and should not be applied. Consequently, Respondent's argument—that the maxim *expressio unius est exclusio alterius* precludes the doctrine of liberal construction from being applied in the instant case—fails.

* * *

III. CONCLUSION

In his Opening Brief on the Merits, Petitioner Luis A. Carrillo demonstrates that the Court of Appeal has 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. Respondent LAUSD presents no fruitful argument to the contrary. Consequently, for the reasons stated herein, Petitioner respectfully requests that this Court reverse the Court of Appeal and hold that the Court of Appeal has 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.

Dated: August 31, 2017

Respectfully Submitted,

By: 

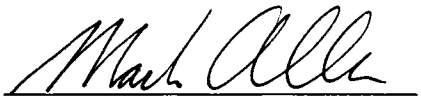
Kelly C. Quinn
Mark W. Allen
Attorneys for Petitioner
and Objector
Luis A. Carrillo

CERTIFICATE OF COUNSEL

Pursuant to California Rule of Court 8.520, subdivision (c)(1), the undersigned certifies that this brief contains 3,274 words, according to the Microsoft Word word-count program. The word count includes footnotes but excludes the table of contents, table of authorities, and proof of service.

Dated: August 31, 2017

Respectfully Submitted,

By: 

Kelly C. Quinn
Mark W. Allen
Attorneys for Petitioner
and Objector
Luis A. Carrillo

(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 August 31, 2017, I served the foregoing documents described as: PETITIONER'S REPLY BRIEF ON THE MERITS 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

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(**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 31st day of August 2017, in Los Angeles, California.