S256665

IN THE SUPREME COURT OF CALIFORNIA

LUIS SHALABI

Plaintiff and Appellant

v.

CITY OF FONTANA, et al.

Defendants and Respondents.

REVIEW OF A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO, CASE NO. E069671
SAN BERNARDINO COUNTY SUP. CT., CASE NO.: CIVDS1314694

RESPONDENTS' SUPPLEMENTAL BRIEF

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I. INTRODUCTION

A three-Justice panel of this Court held in Ganahl v. Soher, 2 Cal.Unrep. 415, 416 (1884) (Ganahl I) that the day after minority tolling ends (i.e., a plaintiff's 18th birthday) counts against the running of their statute of limitations. This Court then granted rehearing in bank and affirmed the judgment on different grounds. See, Ganahl v. Soher, 68 Cal. 95 (1885) (Ganahl II).)

Since that time, this Court—and others—have forcefully reaffirmed that Ganahl I remains good law. See, e.g., In re Harris, 5 Cal.4th 813, 848, n.18 (1993); Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998). As set forth in further detail below, there is no good reason to discard these sage holdings now.

II. THIS COURT HAS ALREADY FOUND THAT "GANAHL I" REMAINS GOOD LAW

This Court had occasion to review Ganahl I's continuing vitality through In re Harris, 5 Cal.4th 813 (1993). There, this Court succinctly reaffirmed the obvious—i.e., Ganahl I ***is*** binding "precedent" (id. at 848, n.18) as it is "a California Supreme Court case." In re Harris, supra, 5 Cal.4th at 849.

Ganahl II was, of course, an existing Supreme Court opinion at the time Harris was decided. This Court is therefore ***presumed*** to have been ***aware*** of Ganahl II at the time that it decided the case. See, People v. Bryant, Smith & Wheeler, 60 Cal.4th 335, 403 (2014) ("In the absence of evidence to the contrary, we ***presume*** that the court 'knows and applies the correct statutory and case law.'") (emphasis added and citations omitted); Wilson v. Sunshine Meat & Liquor Co., 34 Cal.3d 554, 563 (1983) ("it is presumed that the court followed the law.… The mere fact that the court did not explicitly refer to [a case cite] … does not support the conclusion that it was ignored."); see also, In re Johnson, 62 Cal.2d 325, 330 (1965)(same).

Neither Plaintiff nor the Court of Appeal has ***ever*** cited ***any*** evidence to overcome this important presumption. Their silence comes with good reason—there is nothing impactful for them to cite. Likely for this reason, among others, the federal Ninth Circuit deferred to this Court in its own analysis of whether Ganahl I has continuing vitality. See, Cabrera v. City of Huntington Park, 159 F.3d

374, 379 (9th Cir. 1998) ("Despite its age, the Ganahl holding is still good law.") (citing In re Harris, 5 Cal.4th 813 (1993)).[1]

After these decisions, there is frankly no good reason to draw a different conclusion now. For starters, the Ganahl I holding has never been disturbed by the Legislature. The statute at issue in Ganahl I—Code of Civil Procedure § 328—has been revisited and amended by several generations of legislators, including in 1903, 1994, and 2014. The "Legislature is presumed to know of existing case law"—including Ganahl I. People v. Superior Court, 4 Cal.4th 1164, 1179 n. 9 (1993). The Legislature's failure to alter Ganahl I's holding through amendment to the statute is, of course, "indicative of legislative approval of [its] interpretation" of pertinent statute of limitations law. Id.; see, id. at 1184 ("The Legislature is presumed to have known of these previous decisions [regarding a statute's meaning] , and its

[1] This Court's determination of state law is, of course, binding on lower federal courts (like the Ninth Circuit). See, e.g., Oxborrow v. Eikenberry, 877 F.2d 1395, 1399 (9th Cir. 1989) ("The Washington Supreme Court must be recognized as the ultimate expositor of its own state law."). Indeed, state court rulings as regards state law questions are almost always binding on the federal Supreme Court itself. See, Mullaney v. Wilbur, 421 U.S. 684, 691 (1975) ("This Court. . .repeatedly has held that state courts are the ultimate expositors of state law [citations omitted] and that we are bound by their constructions except in extreme circumstances not present here.").

failure to address their holdings in subsequent amendments [to the statute in issue] is tantamount to acquiescence in those decisions."); see also, Kimble v. Marvel Ent., LLC, 576 U.S. 446, 456 (2015) (finding it important for stare decisis purposes that, for "50 years", "Congress has spurned multiple opportunities to reverse [our prior decision]…."); Watson v. United States, 552 U.S. 74, 82–83 (2007) (stating that "long congressional acquiescence," there totaling just 14 years, "enhance[s] even the usual precedential force we accord to our interpretations of statutes.") (internal quotation marks omitted).

At this point, given Ganahl I, Harris, and over one century of legislative silence in the wake of their holdings, Plaintiff's remedy—if any—lies in political advocacy before the Legislature. See, e.g., Chicago Title Ins. Co. v. California Canadian Bank, 1 Cal.App.4th 798, 812 (1991) (finding litigants are free to "effect change to [a] statutory system by advocating legislation…. We may not ourselves lightly tamper here with the existing law, even if the result of the application of [existing statutory law] might seem harsh in some contexts."); Korens v. R. W. Zukin Corp., 212 Cal.App.3d 1054, 1063 (1989) (finding the judicial function is simply to apply the meaning of existing statutes "unless or until the Legislature requires otherwise"

by amending them); see also, Kimble, supra, 576 U.S. at 456 ("stare decisis carries enhanced force when a decision. . . interprets a statute. Then, unlike in a constitutional case, critics of our ruling can take their objections across the street, and Congress can correct any mistake it sees.") (citations omitted).

Moreover, Ganahl I's holding is demonstrably correct. (See, Respondents Opening Merits Brief, pp. 22–30; ASCDC Amicus Brief, pp. 2–21). For his part, Plaintiff's merits arguments do nothing to change this reality. (See, Respondents' Merits Reply, pp. 5-9).

III. CONCLUSION

While subsequent en bank review of a Supreme Court panel opinion can have significance in some circumstances,[2] those principles are inapplicable here where the panel decision in issue (Ganahl I) has already been found to be of precedential value by this Court. See, In re Harris, supra, 5 Cal.4th at 848-849 and n. 18. In such circumstances, stare decisis considerations control. See, Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 455 (1962) (emphasizing the importance of stare decisis); see also, Kimble, supra, 576 U.S. at 455 (stare decisis "promotes the evenhanded, predictable,

[2] (See, ASCDC Amicus Supplemental Brief, p.1) (collecting cases).

and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.") (citations omitted).

For these reasons, and for all the reasons set forth herein, the Court should reaffirm the controlling nature of Ganahl I in these proceedings and it should otherwise reverse the Court of Appeal's erroneous decision.

DATED: April 7, 2021

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 1629 words as counted by the Microsoft Office Word 2016 version word-processing program used to generate this brief.

DATED: April 7, 2021

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I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1100 Town & Country Road, Suite 1450, Orange, California 92868, (714) 937-1010.

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/s/ Debra Miranda
DEBRA MIRANDA

STATE OF CALIFORNIA
Supreme Court of California

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/s/Debra Miranda

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