

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Court of Appeal
Fourth Appellate District

FILED ELECTRONICALLY

09/06/2022

Kevin J. Lane, Clerk
By: Alissa Galvez

DARRYL COTTON,
Plaintiff and Appellant,
v.
LAWRENCE GERACI,
Defendant and Respondent.

D080460

San Diego County Super. Ct. No. 37-2022-00000023-CU-MC-CTL

THE COURT:

Appellant filed a letter brief in response to this court's August 18, 2022 order. Appellant argues, as he did in his opening brief, that the order denying appellant's ex parte application to set aside the judgment in the prior case (*Geraci v. Cotton*, Case No. 37-2017-00010073) is appealable because while nonstatutory motions to vacate are not appealable, "an exception applies when the appellant alleges that the underlying order or judgment is void." (*Doe v. Regents of University of California* (2022) 80 Cal.App.5th 282, 289 (*Doe*)). In *Doe*, however, the party who sought to vacate the judgment filed her motion in the same action in which the judgment was entered. (See *id.* at p. 289.)

Appellant argues *Doe* does not limit the appeals of orders denying motions to vacate a void judgment to those motions filed only in the original action, because "a void order or judgment may be directly or collaterally attacked at any time." However, appellant has provided no authority to support the proposition that an order denying a motion to set aside a judgment is appealable where the motion was filed in a collateral action. There is no appealable order or judgment in the instant case (*Cotton v. Geraci*, Case No. 37-2022-00000023), which appellant initiated to collaterally attack the judgment in the prior case (*Geraci v. Cotton*, Case No. 37-2017-00010073).

The matter having been considered by Presiding Justice McConnell and Associate Justices Huffman and Aaron, the appeal is DISMISSED on the ground that it is taken from a nonappealable order.

MCCONNELL

Presiding Justice

cc: All Parties

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

09/06/2022

KEVIN J. LANE, CLERK

By A. Galvez
Deputy Clerk

