

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Court of Appeal
Fourth Appellate District

FILED ELECTRONICALLY

08/18/2022

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's notice of appeal and civil case information statement indicate he is appealing a February 25, 2022 order. Appellant attached to his civil case information statement a copy of a February 25, 2022 order denying appellant's ex parte application to set aside a judgment in a prior case. Because the February 25, 2022 order was not made after an appealable judgment in the instant case, the order is not appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). Thus, on July 15, 2022, this court requested that appellant obtain and submit an appealable judgment. Appellant did not respond to the court's request.

Appellant addressed appealability in his opening brief, filed on July 21, 2022, contending that an order denying a motion to vacate a void judgment is appealable. However, in each of the cases that appellant cites, the party who sought to vacate a judgment filed his or her motion in the same action in which the judgment was entered. (See *Doe v. Regents of University of California* (2022) 80 Cal.App.5th 282, 289; *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 931; *In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035, 1040.) Here, because appellant sought to set aside a judgment in a prior case and there is no judgment in the instant case, the February 25, 2022 order denying appellant's motion is not appealable as an order made after entry of judgment under Code of Civil Procedure section 904.1, subdivision (a)(2). Additionally, the February 25, 2022 order does not qualify as an appealable order or interlocutory judgment under Code of Civil Procedure section 904.1, subdivisions (a)(3)-(13).

Accordingly, the court requests that within five days of the date of this order, appellant submit a letter brief not to exceed three pages double-spaced, explaining why this appeal should not be dismissed on the ground it is taken from a nonappealable order. Specifically, appellant should address whether the February 25, 2022 order qualifies as a final appealable order. (See *Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5.) Respondent may also address the appealability of the February 25, 2022 order within the same time period.

Alternatively, either appellant or respondent may submit a final judgment and the court will construe the notice of appeal as being from the judgment. (Cal. Rules of Court, rule 8.104(d).)

MCCONNELL
Presiding Justice

cc: All Parties