

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Sakuma v. Association of Apartment Owners of the Tropics at Waikele

Sakuma v. Ass'n of Apartment Owners of the Tropics at Waikele, 311 F. App'x 9 (9th Cir. 2009) · No. Nos. 07-16396, 07-17189, 07-17298 · Decided January 14, 2009

SUMMARY

The Ninth Circuit addressed three consolidated appeals arising from post-judgment orders in litigation involving Patsy N. Sakuma. It dismissed the appeal from a civil contempt order as moot and affirmed orders designating Sakuma a vexatious litigant, imposing a pre-filing screening order, and denying relief from a judgment enforcing a settlement. The court held that Sakuma received adequate notice and an opportunity to be heard and that her Rule 60(b)(6) arguments were untimely and insufficient.

OPINION

PER CURIAM.

MEMORANDUM ** In these consolidated appeals, Patsy N. Sakuma, an attorney, appeals pro se from three post-judgment orders of the district court. In No. 07-16396, Sakuma appeals from a civil contempt order, and we lack jurisdiction over this appeal.

In Nos. 07-17189 and 07-17298, Sakuma appeals from orders designating her a vexatious litigant and entering a pre-filing screening order, and denying her motion for relief from a judgment enforcing a settlement in underlying litigation.

We have jurisdiction over the appeals in Nos. 07-17189 and 07-17298 under 28 U.S.C. § 1291. We review for an abuse of discretion. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100 (9th Cir.2006) (denial of a Rule 60(b) motion); *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir.1990) (vexatious litigant order).

We dismiss No. 07-16396 and affirm Nos. 07-17189 and 07-17298. In No. 07-16396, Sakuma complied with the contempt order and the district court never imposed sanctions for contempt. Because relief from the contempt order would not afford Sakuma any remedy, the appeal is moot. See *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir.1991). Consequently, we dismiss the appeal for lack of jurisdiction.

In Nos. 07-17189 and 07-17298, Sakuma contends that the district court failed to afford her notice and an opportunity to be heard before imposing the prefiling screening order. We disagree. The district court afforded Sakuma an opportunity to brief the issue, considered Sakuma's arguments, and thereafter entered findings supporting the screening order. See *De Long*, 912 F.2d at 1147.

In No. 07-17189, Sakuma also appeals from the order denying her motion for relief from judgment. See Fed.R.Civ.P. 60(b)(6). Sakuma contends the district court should have afforded relief under Rule 60 based on defendants' alleged breaches of the 2002 settlement agreement.

However, the alleged breaches occurred long before Sakuma filed her Rule 60(b)(6) motion. Sakuma should have raised her contention earlier, including in a prior Rule 60 motion that has already been affirmed by this court. This contention is therefore untimely. See Fed.R.Civ.P. 60(c)(1).

The single breach alleged to have occurred in June 2006 was not a "complete frustration" of the settlement agreement and, therefore, would not justify relief. *Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162*, 937 F.2d 408, 410 (9th Cir.1991). Sakuma's remaining contentions are unpersuasive. Sakuma's motion to expedite is denied as moot. No. 07-16396 DISMISSED.

Nos. 07-17189 and 07-17298 AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.