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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANGELICA GUEVARA,

Plaintiff and Appellant,

v.

LOS ANGELES SUPERIOR COURT,

Defendant;

CITY OF BELL,

Real Party in Interest and
Respondent.

B223070

(Los Angeles County

Super. Ct. No. BS123054)

APPEAL from a judgment of the Superior Court of Los Angeles County.

James C. Chalfant, Judge. Affirmed.

Solomon T. Harris for Plaintiff and Appellant.

Meyers, Nave, Riback, Silver & Wilson, J. Scott Smith, Kimberly E. Colwell for
Real Party in Interest and Respondent.

Angelica Guevara was issued a citation for parking overnight on a public street in the City of Bell (the City), in violation of a municipal ordinance. Guevara conceded that she parked in violation of the ordinance, but alleged that, due to the lack of adequate notice of the overnight parking restrictions, the ordinance as applied violated the Vehicle Code and the United States Constitution.

After losing an administrative appeal and a trial de novo in the superior court, Guevara filed the instant action, styled a Petition for Writ of Mandate against the "Huntington Park Superior Court," requesting the court, in effect, to reverse the result of the trial de novo. She also brought causes of action against the City for declaratory relief, injunctive relief, and attorney fees and costs.

The trial court dismissed the petition for lack of jurisdiction over the respondent superior court, and sustained the City's demurrer without leave to amend. The court ruled that, with respect to the cause of action for declaratory relief, Guevara "lacks standing to raise a declaratory claim" under Code of Civil Procedure section 1060. Noting that injunctive relief and attorney fees and costs are remedies and not causes of action, the court dismissed these claims for relief as well. Guevara appeals these rulings.

We conclude that the trial court properly determined that it had no jurisdiction to order another superior court judge to change its ruling; because the superior court which conducted the trial de novo was the court of last resort for challenges to parking tickets, its decision is final and is not subject to further review. We further hold that Guevara cannot maintain a declaratory relief action challenging the ordinance at issue, as she has no stake in the outcome. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2008, appellant Guevara, a resident of Oakland, California, was issued a ticket for parking overnight on a public road, in violation of the City's Ordinance 10.28.190, resulting in a \$44 fine. Guevara concedes that she parked in violation of the ordinance, but alleges that the ordinance violates Vehicle Code section 21103 and various provisions – the Due Process Clause, the Interstate Commerce Clause, the rights of non-

resident motorists, among others – of the United States Constitution. The general outline of her argument is that she had no actual prior notice of the City's proscription on overnight parking (she was visiting from northern California), and that she "never encountered any of the 17 signs [posted in and around the City which would have provided such notice] during her short visit to the City."

On January 2, 2009, Guevara challenged the citation by submitting an administrative review form which resulted in a "complete Administrative Review" by a "parking reviewer." When the parking reviewer determined that the citation had been properly issued, Guevara appealed that decision by requesting an Administrative Hearing. Guevara opted to proceed in her appeal by written declaration, which she submitted on February 19, 2009. At the scheduled hearing on March 4, 2009, the hearing examiner determined that the citation was valid "pursuant to California Vehicle Code section 21103[;] signs are posted at the major entrances to the city." Guevara appealed that decision by seeking a trial de novo in the superior court.

The trial de novo was conducted on April 16, 2009; Guevara was represented by counsel. The trial court took the matter under submission and entered judgment against Guevara on May 27, 2009, upholding the \$44 fine.

Over four months later, Guevara filed the instant action¹ requesting the court to issue a writ of mandate "vacating [the superior court's] final order, and granting [Guevara] reasonable attorney fees and costs" She also sought declaratory and injunctive relief against the City, asking that the City be enjoined from enforcing Ordinance 10.28.190 "unless or until Bell posts warning signs in a manner comparable to that required under CVC 21103;" for a declaration that the signage requirement contained in Vehicle Code section 21103 is "a default rule, setting forth the minimum pre-violation notice required for all local parking ordinances;" and for an order to the City "to make diligent efforts to ascertain the whereabouts of all motorists or vehicle owners who have

¹ The petition was originally filed in the appellate division of the superior court; that court declined to hear the matter for lack of jurisdiction, and the case was transferred to department 85.

been cited for violating 10.28.190 from 2004 to present, and pay them full restitution. . . ." The City demurred.

After hearing argument, the trial court dismissed the Petition for Writ of Mandate directed to the superior court. The court explained: "The City's overnight parking ordinance well may be simply a revenue generating device without adequate notice. The problem is that the court cannot decide the issue. The court in City of Bell v. Guevara [sic] has already decided to the contrary. Although this court hears mandamus concerning public agencies, a decision by another superior court judge is not a decision which the court has jurisdiction to review." The court also sustained without leave to amend the causes of action for declaratory relief, injunctive relief, and attorney fees and costs directed at the City. The court determined that Guevara's claim for declaratory relief did not allege a proper subject for such relief within the meaning of Code of Civil Procedure section 1060. That is to say, because Guevara's parking citation case was over, there was no longer an actual controversy involving justiciable questions relating to the rights and obligations of Guevara and the City. Although Guevara alleged "causes of action" for injunctive relief and attorney fees, the court ruled that these are remedies, not causes of action.

Guevara appeals the judgment of dismissal.

DISCUSSION

1. *Petition for writ of mandate*

Vehicle Code section 22506 provides that "Local authorities may by ordinance or resolution prohibit or restrict the stopping, standing, or parking of vehicles on a state highway, in their respective jurisdictions" Vehicle Code section 22507.5 specifically permits "local authorities . . . , by ordinance or resolution, [to] prohibit or restrict the parking or standing of vehicles on certain streets or highways, or portions thereof, between the hours of 2 a.m. and 6 a.m. . . ." Pursuant to this statute, the City adopted an ordinance, Bell Municipal Code section 10.28.190A, which prohibits the parking of any vehicle on all City streets between the hours of 2:00 a.m. and 5:00 a.m.

daily. Signs giving notice of this parking restriction are posted at 17 locations throughout the City, including the major entrances into the City.²

Vehicle Code section 40200 et seq. provides a comprehensive procedure for contesting parking fines issued by local agencies. Thus, for example, section 40215 requires an administrative hearing process for the review of a notice of parking violation. (Veh. Code, § 40215, subd. (a).) If dissatisfied with the results of this review, the cited person is entitled to an administrative hearing of the violation. (Veh. Code, § 40215, subd. (b).) And within 30 days after issuance of the final decision of the administrative tribunal, "the contestant may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence." (Veh. Code, § 40230, subd. (a).)

Guevara was cited for parking her car on a City street between the hours of 2:00 a.m. and 5:00 a.m. She requested and received (1) review of the notice of parking violation as specified in Vehicle Code section 40215, subdivision (a); (2) an administrative hearing of the violation pursuant to Vehicle Code section 40215, subdivision (b); and (3) a trial de novo in the superior court as set forth in Vehicle Code section 40230, subdivision (a).

Guevara sought to continue her challenge of the parking ticket by filing the petition herein, in which, in essence, she asked the superior court to reverse the decision of the superior court which had conducted the trial de novo. We concur with the trial court's conclusion that it had no jurisdiction to render the relief requested.

"It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute. [Citation.]" (*People v. Mazurette* (2001) 24 Cal.4th 789, 792, 102 Cal.Rptr.2d 555, 14 P.3d 227; see also *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 109-110 and cases cited (plur. opn. of Kennard, J.)) Thus, for example, Penal Code section 1466 provides that an appeal may be taken from a judgment or order in an infraction or misdemeanor case to the appellate division of the

² The City, with a population of approximately 36,000, covers 2.5 square miles.

superior court. A parking violation, however, is neither an infraction nor a misdemeanor, but rather results only in a civil penalty. Thus, the superior court conducting the trial de novo of a parking violation is the court of last resort; the appellate department of the superior court has no jurisdiction to review the final judgment entered in the trial de novo.

As the appellate department of the superior court noted in *Lagos v. City of Oakland* (1995) 41 Cal.App.4th Supp. 10, "In 1992 the Legislature substantially changed the way parking violations are handled. . . . [¶] The Legislature has provided for a two-step process when a person questions his or her notice of a parking violation (parking ticket).' The process involves an investigation and then administrative review within the processing agency. Judicial review is provided for by an appeal to the municipal [now superior] court. This appeal is 'heard de novo.' As such, this de novo appeal is similar to a small claims appeal. . . . No express provision is made for further appeal to the appellate department." (*Id.* at p. 12, internal citations omitted.) Like the court in *Lagos v. City of Oakland*, we conclude "that the Legislature intended this 'de novo' review of the administrative decision to be the extent of the process due a parking violation contestant. Thus, the adjudicative process ends in the municipal [now superior] court." (*Ibid.*; see also *Smith v. City of Los Angeles Dept. of Transportation* (1997) 59 Cal.App.4th Supp. 7, 10 ["In view of the specific and comprehensive nature of the statutory scheme provided in section 40200 et seq., and the clear legislative intent that the courts have limited involvement in the determination of liability for parking violations, we conclude that the procedure for review set forth in section 40200 et seq. is the only procedure available to contest a parking citation."].) Thus, Guevara is not entitled to further judicial review of her parking violation case, either by way of appeal to the appellate department of the superior court, or by petition for writ of mandate to the superior court, or by appeal or writ to this court.

2. *Declaratory and injunctive relief*

Guevara's declaratory relief action was dismissed for lack of a justiciable controversy. Relying on *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, Guevara maintains that the demurrer was improperly sustained because "A general demurrer to a declaratory relief claim must be overruled as long as an actual controversy is alleged; the pleader need not establish it is also entitled to a favorable judgment." The cited case is inapposite, as we explain below.

Declaratory relief claims are governed by Code of Civil Procedure section 1060, which provides as follows: "Any person interested under a written instrument, excluding a will or trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." The declaratory relief statute is designed as a form of "preventative justice, to declare rights rather than execute them." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 607-608, quoting *Babb v. Superior Court of Sonoma County* (1971) 3 Cal.3d 841, 848.) It thus "operates prospectively to declare future rights, rather than to redress past wrongs." (*County of San Diego v. State of California, supra*, 164 Cal.App.4th at p. 607, internal citation omitted.)

Ludgate Ins. Co. v. Lockheed Martin Corp., *supra*, 82 Cal.App.4th 592, upon which Guevara relies, does not provide otherwise. In that case, Ludgate, an excess insurer, sued its insured for a declaration concerning its duty to defend a particular claim. The insured cross-complained for declaratory relief and breach of contract. Ludgate sought judgment on the pleadings on the cross-complaint, claiming that, because it was an excess insurer and the primary policy limits had not yet been determined to have been exhausted, the insured could not allege an actual controversy sufficient for declaratory

relief. The trial court agreed and entered judgment for Ludgate on the insured's cross-complaint. The Court of Appeal reversed. Ludgate itself had alleged an actual controversy regarding its defense obligations, an allegation not controverted by the insured. The court held that Ludgate was bound by those allegations, and thus could not establish by way of demurrer or judgment on the pleadings that there was no actual controversy for purposes of declaratory relief. This holding has no application to the case before us.

As previously noted, the "actual controversy" requirement of Code of Civil Procedure section 1060 "encompasses a probable *future controversy* relating to the legal rights and duties of the parties." (*County of San Diego v. State of California, supra*, 164 Cal.App.4th at p. 606, emphasis in original, internal citation omitted.) Here, the legal rights of the parties have been adjudicated. That is to say, in the de novo trial, the superior court finally determined that Guevara was required to pay a \$44 fine for parking overnight on a City street, even though she had no actual notice of the parking restriction. There is no actual controversy between Guevara and the City such that a judicial declaration would affect Guevara's behavior – the very purpose of a declaratory relief action. Having sought to have her citation dismissed based on her lack of notice of Ordinance 10.28.190, Guevara no longer faces the prospect of being cited for violating the City's overnight parking prohibition without having notice of the provisions of the ordinance. The trial court properly ruled that, in the absence of a justiciable controversy, declaratory relief under Code of Civil Procedure section 1060 is unavailable.

Guevara's claim for injunctive relief must fail for the same reason. As with a declaratory judgment, injunctive relief will only be granted to a party beneficially interested in the controversy. (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 315 [claimant "must have some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large."].) Moreover, Guevara did not, and cannot, allege that she will suffer irreparable harm if the injunction is not granted. Guevara resides not in or near the City, but in Oakland and, as noted above, will not again be cited, without notice, for parking on a

City street between the hours of 2:00 a.m. and 5:00 a.m. Consequently, the trial court properly sustained the City's demurrer to Guevara's claim for injunctive relief.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.