Court of Appeal, Fourth District, Division 3, California.
Angelo A. BOUSSIACOS et al., Plaintiffs, Cross-defendants and Respondents,
v.
Walter PRIDDY et al., Defendants, Cross-complainants and Appellants.

No. G038237.

(Super.Ct.No. 05CC13100)

Not Reported in Cal.Rptr.3d, 2007 WL 4306835

Dec. 11, 2007.

Appeal from a judgment of the Superior Court of Orange County, H. Warren Siegel, Judge. Reversed and remanded with directions.

Law Offices of Barry A. Ross and Barry A. Ross for Defendants, Cross-complainants and Appellants.
W. Patrick O'Keefe, Jr.; Russell & Miller and Daryl J. Miller for Plaintiffs, Cross-defendants and Respondents.

OPINION

FYBEL, J.

INTRODUCTION

***1** Plaintiffs Angelo A. Boussiacos and Connie Boussiacos (the Boussiacoses) sued their next-door neighbors, defendants Walter Priddy and Trina Priddy (the Priddys), for statutory nuisance and violation of their mutual homeowners association's covenants, conditions, and restrictions (CC & R's), based on allegations the Priddys maintained trees, which blocked the Boussiacoses' view, along the parties' shared property line. The Priddys filed a cross-complaint against the Boussiacoses, alleging claims of nuisance and violation of the CC & R's, based on a deck the Boussiacoses had constructed on their property without the homeowners association's approval. Following a bench trial, the court found in favor of the Priddys as to the Boussiacoses' claims and in favor of the Boussiacoses as to the Priddys' claims.

Notwithstanding the court's determination no party had proved any claim actually alleged in the pleadings, the trial court unilaterally entered judgment requiring the Priddys to maintain the trees at specified heights in accordance with an "understanding" entered into by the Boussiacoses and the previous owners of the Priddys' property (the Wileys).

The Priddys appeal from the judgment on the ground the trial court exceeded its jurisdiction in this matter by providing the Boussiacoses a remedy based on a theory of liability (enforcement of the "understanding") that was not before the court.

We reverse. Before a party may obtain relief, he or she must plead a cause of action supporting the party's claim for relief. The trial court found the Boussiacoses had failed to prove the only two claims they had alleged against the Priddys. The trial court therefore erred by entering a judgment that required the Priddys to maintain their trees at specified heights.

We remand to the trial court with directions to enter judgment in favor of the Priddys as to the Boussiacoses' claims, and in favor of

the Boussiacoses as to the Priddys' claims. As stipulated by the parties, the judgment shall state the parties shall bear their own costs.

BACKGROUND

The Boussiacoses filed a verified first amended complaint (the complaint) against the Priddys, alleging claims for (1) statutory nuisance within the meaning of Civil Code section 3479, and (2) violation of the parties' Charter Point Community Association's (the association) CC & R's.

In the complaint, the Boussiacoses alleged the Priddys maintain on the parties' common boundary line "a row of trees which are closely planted in order to form a hedge, well in excess of 15 feet in height, extending over a substantial portion of the common boundary of [the] Priddy[s'] property and [the Boussiacoses'] property." The complaint stated the "[t]rees are configured and are being maintained upon the common boundary in such a manner so as to constitute a 'fence[,'] in the sense that the [t]rees totally obstruct [the Boussiacoses'] view through the [t]rees," and the maintenance of the trees at a height in excess of the wrought iron fence along the parties' common boundary line constitutes a nuisance within the meaning of Civil Code section 3479 and a "spite fence" within the meaning of section 841.4. The Boussiacoses further alleged the Priddys violated the association's CC & R's because the trees were planted and are being maintained without the prior written approval of the architectural committee of the association.

***2** The Boussiacoses prayed for a judgment against the Priddys to include "a preliminary and permanent injunction enjoining [the Priddys], and each of them, and their agents, servants, employees, and all other persons acting under, in concert with, or for them from maintaining the [t]ree-fence now existing between the common boundary between [the] Priddy[s'] property and [the Boussiacoses'] property, and from continuing any other violation of the CC & R's by the [Priddys] established at the time of trial"; (2) punitive damages; (3) costs of suit; (4) reasonable attorney fees; and (5) "such further and additional relief as the Court deems just and proper."

The Priddys filed a verified first amended cross-complaint (the cross-complaint) against the Boussiacoses, alleging claims for nuisance and violation of the association's CC & R's. In the cross-complaint, the Priddys alleged the Boussiacoses constructed a deck, made modifications to a slope, and made other additions to their property without the prior written approval of the association's architectural committee. The Priddys prayed for a judgment against the Boussiacoses for (1) "a preliminary and permanent injunction requiring [the Boussiacoses], to either remove the Additions or obtain approval for the Additions from the Charter Point Homeowners Association and the County of Orange"; (2) punitive damages; (3) reasonable attorney fees; (4) costs of suit; and (5) "[s]uch further and additional relief as the Court deems just and proper."

Following a four-day bench trial, the court took the matter under submission on December 7, 2006, informing the parties that the court "will dictate the statement of decision on the record" and that "[i]f anybody needs a formal statement of decision, request a copy from the reporter, submit it and I'll sign it."At a hearing on December 11, the trial court read what it referred to as its statement of decision, informing the parties that "[a]fterwards, I'll

be happy to answer whatever questions might need clarification, but again I don't want to have any more argument after the decision."The trial court reiterated, "if anybody needs a copy of it just order a copy from the clerk and I'll date it and sign it."

The trial court proceeded to state the Boussiacoses proved neither nuisance nor violation of the association's CC & R's as alleged in the complaint. The court also stated its finding the Priddys failed to prove their claims for nuisance and violation of the association's CC & R's as alleged in the cross-complaint.

Notwithstanding the trial court's conclusion that no party proved any claim, the court further stated it found that the Wileys had entered an understanding with the Boussiacoses about maintaining the trees at certain heights. The court stated, "the parties are bound by the agreement and understanding. Both sides are entitled to have it enforced."The trial court stated the Priddys are required to maintain the height of their trees "at the level of the agreement."

***3** Following the trial court's reading of its "statement of decision," counsel requested clarification on various points in the statement, and agreed to bear their own costs. The record does not show any party requested a statement of decision, or requested a copy of the reporter's transcript as suggested by the trial court.

On December 12, 2006, the court "renders judgment as follows: [¶] Now therefore, *IT IS ORDERED, ADJUDGED AND DECREED THAT:*

"1. [The Boussiacoses] and [the Priddys] are entitled to enforcement of the understanding between [the Boussiacoses] and [the Priddys] predecessor in interest, Wiley, as follows:

"a. [The] Boussiacos[es] may retain their deck as against [the] Priddy[s] on condition that the Priddy's [*sic*] retain their trees [¶] 1) at the level of the top of the wrought iron fence between the properties at 4' at the North/West end; at the top of the higher fence. [¶] 2) at the top of the deck rail, provided that the trees may grow above this level but must be trimmed at least once a year back to the top of the rail level.

"b. [The] Boussiacos[es] may retain as against [the] Priddy[s] the deck and other construction.

"2. Each side, per stipulation, will bear their own costs and attorneys fees.

"3. [The] Priddy[s] shall be allowed by [the] Boussiacos[es] to retain the trees as described in # 1 above.

"4. Other than as above ordered, [the] Boussiacos[es] shall take nothing as against [the] Priddy[s] on [the Boussiacoses'] complaint, and [the] Priddy[s] shall take nothing against [the] Boussiacos[es] on their cross-complaint."

On December 14, 2006, the Priddys filed "objections to statement of decision," stating that "[s]ince the Court has ruled that none of the Boussiacoses ['] causes of action were proved, there is no basis or authority for the Court to require custom trimming of the trees." The Priddys further argued the court's stated basis for ordering them to trim the trees was "an implied agreement or understanding that was made between the Association, the Wileys and the Boussiacoses," but "there was no cause of action alleged, argued or presented by the Boussiacoses in support of this alternate theory presented by the Court subsequent to

the trial."

By a minute order dated December 15, 2006, the trial court stated, "[t]he parties had an opportunity to ask for clarification of the Statement of Decision on the record, and did not. Notwithstanding that fact, the judgment was entered on 12/12/06 and objections were not timely [citation]. The court judgment makes it clear that specific performance of the agreement is given, although claims for nuisance, damage and violations of the CC & R's is not. Each party asked in this equitable case for such other and further relief as appears just and proper."

On December 28, 2006, the Priddys filed a motion to partially vacate and modify the judgment "on the basis that there was an incorrect or erroneous legal basis for the judgment."In the motion, the Priddys stated they seek "to delete from the judgment the provisions relating to the specific performance of the 'understanding.' " They also argued the parties never stipulated to bear their own attorney fees, and the judgment's reference to such a stipulation should be struck.

***4** On February 9, 2007, the Priddys appealed from the judgment. On February 14, the court granted their motion to modify the judgment "to specify that the court finds that neither party prevailed on their respective complaints and therefore neither party is entitled to recover attorneys fees."The court otherwise denied the Priddys' motion "as to the specific performance remedy because specific performance is an equitable remedy rather than a cause of action and issues involved with specific performance were addressed at trial."On February 20, the trial court amended the judgment by deleting the statement the parties stipulated to bear their own attorney fees and adding that "[n]either side is entitled to attorney fees per Civil Code Section 1717."

The Priddys filed a motion in this court to file an amended notice of appeal in light of the trial court's entry of an amended judgment.[FN1]This court granted the motion and the Priddys filed an amended notice of appeal accordingly.

FN1. No issue has been raised in this appeal regarding whether the trial court was authorized to enter the amended judgment.

DISCUSSION

I.

THE PARTIES DID NOT REQUEST A STATEMENT OF DECISION AND THE TRIAL COURT FAILED TO RENDER A VALID STATEMENT OF DECISION WITHIN THE MEANING OF CODE OF CIVIL PROCEDURE SECTION 632.

Code of Civil Procedure section 632 provides: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The

request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision. [¶] The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties."

Here, the record does not show any party ever requested a statement of decision following the four-day bench trial. After taking the matter under submission, the trial court informed the parties that the court would read its "statement of decision" into the record. The court stated, "[a]s I indicated the other day I'm going to be reading this, so I do apologize for not looking directly a[t] you, but I'm going to try to follow my notes as much as possible. [¶] Afterwards, I'll be happy to answer whatever questions might need clarification, but again I don't want to have any more argument after the decision. [¶] And if anybody needs a copy of it just order a copy from the clerk and I'll date it and sign it."The record does not show that any party ordered a copy from the clerk or otherwise sought to obtain a formal written statement of decision from the trial court.

***5** Although a trial court may issue a statement of decision sua sponte (*In re Marriage of Rising* (1999) 76 Cal.App.4th 472, 476, fn. 7), here the trial court failed to comply with the requirements of Code of Civil Procedure section 632 in rendering its "statement of decision." (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2007) ¶ 16:162, p. 16-36 ["A trial judge's 'special little procedure' of signing a reporter's transcript of oral findings has been treated as a refusal to comply with [Code of Civil Procedure section] 632"]; see *Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 128.)

What the trial court called a "statement of decision" was actually the court's tentative decision. The court could have ordered that its tentative decision would constitute its statement of decision under Code of Civil Procedure section 632"unless within 10 days either party specifies controverted issues or makes proposals not covered in the tentative decision."(Cal. Rules of Court, rule 3.1590(c); *Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 718-719.) The court, however, did not make such an order. Instead, the court insisted the parties seek any clarification of the "statement of decision" immediately after it was read, and then entered judgment the following day. Therefore, no statement of decision within the meaning of Code of Civil Procedure section 632 was issued in this case.

Because no party requested that the court issue a statement of decision and no party contends on appeal that he or she was deprived of the opportunity to do so, we presume the trial court made whatever findings of fact are necessary to support the judgment. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 61.)

II.

THE TRIAL COURT ERRED BY ORDERING A REMEDY BASED ON A THEORY OF LIABILITY NOT BEFORE THE COURT.

The Boussiacoses asserted only two claims against the Priddys: (1) statutory nuisance

and (2) violation of the association's CC & R's. The trial court concluded on the record that the Boussiacoses failed to prove either claim. The court was without any legal authority to make findings regarding an unalleged understanding between the Boussiacoses and the Wileys, conclude that this understanding was enforceable against the Priddys, and then enter a judgment which imposed tree-trimming maintenance obligations on the Priddys. The trial court's award of relief must be based on a pleaded cause of action.

The following discussion contained in *Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 122, regarding the "fundamental principle" of courts being limited to deciding the issues before them is apt: "In *Baar [v.] Smith* (1927) 201 Cal. 87 ..., the California Supreme Court quoted the 'following appropriate language' from a United States Supreme Court case dating to the past century: ' "Tho the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will.... The judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases."' (*Baar, supra,* 201 Cal. at p. 100, quoting from *Windsor [v.] McVeigh* (1876) 93 U.S. (3 Otto.) 274, 282....)"

***6** Here, the trial court transcended the limits of its authority. Citing *Singleton v. Perry* (1955) 45 Cal.2d 489, the Boussiacoses argue a "plaintiff may secure relief justified by the evidence, even though the relief is greater than or different from that demanded. In upholding awards of relief not specifically prayed for, the Court typically notes that there is a prayer for general relief, such as 'for such other and further relief as the Court deems just and proper.' " The Boussiacoses contend the judgment was therefore proper because the complaint contained a prayer for "such further and additional relief as the Court deems just and proper."

Singleton v. Perry, supra, 45 Cal.2d 489 is inapposite. In that case, the jury found in favor of the plaintiff with regard to her claims for malicious prosecution and false imprisonment. (*Id.* at pp. 491-492.)The defendant argued the trial court erred by instructing the jury on damages in excess of what the plaintiff had prayed for her in her two complaints against the defendant. (*Id.* at p. 498.)The Supreme Court stated, "[i]n upholding awards of relief not specifically prayed for, the courts sometimes particularly note that there is a prayer for general relief (such as the prayer in the present complaint 'for such other and further relief as to the Court may seem just and proper'). [Citations.] But it has been held that a court cannot properly award an amount of damages in excess of that for which the complaint prays."(*Id.* at p. 499.)The Supreme Court affirmed the judgment without deciding the issue, holding, "[r]egardless of the merits of plaintiff's position contrary to the cases which hold

that an amount of damages in excess of that prayed for cannot be awarded, no harm appears to have resulted from the instruction, for the verdict was for an amount well within the limit of the amounts alleged as well as the amounts for which the prayers ask."(*Id.* at p. 500.)Nothing in *Singleton v. Perry* supports the proposition that a prayer for "such further and additional relief as the Court deems just and proper" authorizes a court to unilaterally award relief without a determination of liability on a claim before the court.

The Boussiacoses further argue the Priddys agreed to submit to the trial court the issues whether the Wileys entered into an agreement with the Boussiacoses and the association with regard to the height of the trees and whether that agreement can be enforced against the Priddys. The record does not support this contention.

The record shows the trial court unilaterally raised these issues during trial in the context of determining the factual background of the parties' claims. The court asked the parties to address in their closing argument, "what's the effect of this gentlemen's agreement or understanding as between the association and the parties here and the predecessor with regard to the issue of the views and the deck? [¶] Are the CC & R's really an issue in light of that agreement at least as to the trees and deck issues?"While the parties responded to the court's inquiries, the record does not show they agreed to submit these issues for determination by the court. The parties' joint statement of controverted issues is not in the appellate record. Nothing in the court's tentative decision, which referenced the joint statement of controverted issues, suggested that the parties had agreed to expand the scope of the issues to be decided by the court beyond those framed by the pleadings.

***7** Furthermore, at the hearing on the Priddys' motion to partially vacate and modify the judgment, the Priddys' counsel argued, "[t]he complaint in this case was not for specific performance. The complaint in this case was for injunctive relief. [¶] When you bring an action for specific performance, it has to be an action to specifically perform a contract. In this case there was no contract in the complaint. There was no contract alleged. There ... was no cause of action in the contract."The Priddys' counsel further argued, "[w]e didn't try the case on the basis there was an agreement. The issue of the agreement came up by the court in questions during closing argument after the trial had already been presented."

The trial court rejected the Priddys' argument, stating, "[t]hat is not accurate because the witnesses testified about-several witnesses, not only the parties, but other witnesses from the association testified about the existence of the agreement."The Priddys' counsel responded, "[b]ut the agreement itself, your honor, was the understanding that the Wileys could have the trees in response to the Boussiacos[es'] deck. [¶] The agreement was not the Wileys or the Priddys would trim the trees to a certain level in response to the deck. That was never part of any agreement or understanding between the parties."

Because the record does not show that the enforcement of any agreement between the Boussiacoses and the Wileys was before the court, the trial court erred by awarding the Boussiacoses relief on that basis.

DISPOSITION

The judgment is reversed and the matter is

remanded to the trial court to enter judgment in favor of the Priddys as to the complaint, and in favor of the Boussiacoses as to the cross-complaint. The judgment shall further provide that, pursuant to the parties' stipulation, each party shall bear his or her own costs. As in the amended judgment, the judgment shall also state that neither side is entitled to attorney fees. The Priddys shall recover costs on appeal.

WE CONCUR: ARONSON, Acting P.J., and IKOLA, J.