Filed 8/22/19 Coast Action Group v. Cal. State Bd. of Forestry and Fire Protection CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

COAST ACTION GROUP, Plaintiff and Respondent, v. CALIFORNIA STATE BOARD OF FORESTRY AND FIRE PROTECTION, Defendant and Appellant.	A155575 (Alameda County Super. Ct. No. RG17-860755)

The California State Board of Forestry and Fire Protection (the Board) appeals following the trial court's order granting, in part, a petition for writ of mandamus filed by Coast Action Group (Petitioner). Because subsequent events have rendered the appealed claims moot, we reverse and remand with directions to the trial court to dismiss those claims.

BACKGROUND

" 'Timber harvesting operations in this state must be conducted in accordance with the provisions of the Forest Practice Act [the Z'berg–Nejedly Forest Practice Act of 1973, Pub. Resources Code, § 4511 et seq.[1]].' " (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1146.) In 2013, the Legislature amended the Forest Practice Act to authorize nonindustrial landowners to submit a "working forest management plan" to the Board for approval before harvesting timber. (Stats. 2013,

[1] All undesignated section references are to the Public Resources Code.

ch. 648, § 1 [enacting §§ 4597–4597.22].) The provisions defined who could file a working forest management plan and required that numerous components be included in the plans. (§§ 4597.1, subd. (i), 4597.2.) In 2017, the Board approved regulations implementing these provisions (the 2017 Regulations). (Cal. Code Regs., tit. 14, §§ 1094–1094.35; Register 2017, No. 22 (June 2, 2017).)

Shortly thereafter, Petitioner filed the underlying petition challenging the Board's decision adopting the 2017 Regulations. The petition alleged the 2017 Regulations violated the Forest Practice Act, the Administrative Procedure Act (APA; Govt. Code, § 11340 et seq.), and the California Environmental Quality Act (CEQA; § 21000 et seq.). The trial court granted the petition in part, finding two aspects of the 2017 Regulations violated the Forest Practice Act. Specifically, the trial court found that (1) the 2017 Regulations permit multiple landowners to submit a single working forest management plan, but the Forest Practice Act only authorizes one landowner per plan; and (2) the Forest Practice Act requires working forest management plans to contain extensive information about erosion control, but the 2017 Regulations fail to require all of the statutorily-mandated erosion control information. The trial court denied Petitioner's APA, CEQA, and additional Forest Practice Act claims. The court issued judgment and a peremptory writ of mandate directing the Board to reconsider its adoption of the 2017 Regulations in light of the court's decision.

DISCUSSION

I. *Postjudgment Events*

After the judgment and writ issued, the Legislature enacted Senate Bill No. 901 (S.B. 901) which, among other things, amended the working forest management plan provisions of the Forest Practice Act, effective January 1, 2019. (Stats. 2018, ch. 626, §§ 18–22.) As relevant here, the amendments provide that "[a] working forest management plan may include multiple working forest landowners, but shall cover no more than 10,000 acres of timberland" and change the information on erosion control required to be included in a working forest management plan. (Stats. 2018, ch. 626, §§ 19 [amending § 4597.1, subd. (j)], 20 [amending § 4597.2, subd. (d)].) S.B. 901 also

authorizes the Board to adopt emergency regulations implementing its amendments to the Forest Practice Act. (Stats. 2018, ch. 626, § 46.)

Effective February 15, 2019, the Board promulgated such emergency regulations (the 2019 Regulations), thereby amending the 2017 Regulations.[2] (Register 2019, No. 7 (Feb. 15, 2019).) The 2019 Regulations provide that a working forest management plan "may include multiple [w]orking [f]orest [l]andowners, but shall cover no more than 10,000 acres of timberland," and change the information on erosion control required to be included in a working forest management plan. (Cal. Code Regs, tit. 14, §§ 1094.2, subd. (l), 1094.6, subd. (j).)

II. *Analysis*

The parties dispute the impact of postjudgment events on this appeal. The Board's opening brief, filed after S.B. 901's effective date but before adoption of the 2019 Regulations, argues S.B. 901 renders the judgment moot. Petitioner's response brief—which was filed after the 2019 Regulations were adopted yet does not mention them—contends the judgment is not moot because the 2017 Regulations are inconsistent with S.B. 901's provisions on who can file a working forest management plan and the information on erosion control required to be in a plan. The Board's reply brief argues that both S.B. 901 and the 2019 Regulations render the judgment moot.

We are not persuaded that the enactment of S.B. 901 alone renders the judgment moot. (See *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 392–393 [" ' "It is . . . an established rule of law that on appeals from judgments granting or denying injunctions, the law to be applied is that which is current at the time of judgment in the appellate court." ' [Citation.] The same rule applies in an appeal from mandamus proceedings."].) However, as a result of the 2019 Regulations, the challenged portions of the 2017 Regulations—the provisions defining who can file a working forest

[2] We take judicial notice of the 2019 Regulations on our own motion, having previously provided the parties with the opportunity to present relevant information on the matter. (Evid. Code, §§ 452, subd. (b), 455, subd. (a), 459, subd. (a).)

management plan and setting forth the information on erosion control required to be included in such a plan—have been amended and are no longer in effect. The petition does not challenge the 2019 Regulations and the validity of the 2019 Regulations is not before us. The appealed claims are therefore moot. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 226–227 [" '[A]n action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events. . . . [T]he appellate court cannot render opinions " '. . . upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " ' "]; see also *Bravo Vending*, at p. 393 ["the issues raised by an appeal may be rendered moot by an amendment which either repeals or significantly modifies the portion of the ordinance to which the challenge is directed"]; *Bell v. Board of Supervisors* (1976) 55 Cal.App.3d 629, 636 ["The only 'issue' before us now is the constitutionality of legislation that has been repealed. The repeal of legislation under attack prior to [an] appellate decision may well render the issues in the pending appeal moot."].)

Next, we consider the appropriate disposition. "Ordinarily, when, as here, a case becomes moot pending an appellate decision, the reviewing court will simply dismiss the appeal on the ground it can no longer grant any effective relief. [Citations.] However, when subsequent legislative or administrative action renders an entire controversy moot and dismissal of the appeal would have the effect of affirming the underlying judgment without having reached the merits, appellate courts usually ' "dispose of the case, not merely of the appellate proceeding which brought it here . . ." [citation] . . . by reversing the judgment solely for the purpose of restoring the matter to the jurisdiction of the superior court with directions to the court to dismiss the proceeding.' " (*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590–591 (*La Mirada*).) Both parties seek a different disposition.

Petitioner argues that, if we conclude the case is moot, we should dismiss the appeal and remand to the trial court to determine what modifications to the writ may be required. Petitioner contends equitable considerations support this disposition, relying on

La Mirada, in which the trial court enjoined the construction of a Target store after finding the city improperly granted exceptions from the city's plan. (*La Mirada, supra,* 2 Cal.App.5th at p. 588.) Target appealed the order and also applied to the city to amend the city plan so as to render the exceptions unnecessary. (*Id.* at p. 589.) While the appeal was pending, the city approved the proposed amendments to the city plan, mooting the appeal, and the plaintiffs filed a new lawsuit challenging the amendments. (*Id.* at pp. 589–590.) Instead of reversing the judgment and remanding with directions to dismiss, the Court of Appeal dismissed the appeal, leaving the writ of mandate enjoining construction in place. (*Id.* at p. 591.) The Court of Appeal found this disposition appropriate because "the events that mooted the underlying controversies were . . . initiated by the appellants . . . for the very purpose of removing the question . . . from further litigation." (*Ibid.*) The court also noted the determination of "[w]hether, and to what extent, the new [city plan] amendments require a modification of . . . the writ of mandate is properly addressed by the superior court in the first instance." (*Ibid.*) *La Miranda* is distinguishable. Even assuming the Board initiated events leading to the enactment of S.B. 901 and the resulting 2019 Regulations for the purpose of removing the question from further litigation, there is no indication that Petitioner has filed or intends to file a new lawsuit challenging S.B. 901 or the 2019 Regulations. There is thus no basis to leave the writ of mandate in place and nothing for the trial court to determine in the first instance.

The Board requests that we reverse and remand with directions to the trial court to deny the petition. As the Board notes and Petitioner concedes, the trial court rejected several of Petitioner's claims below and Petitioner did not file an appeal, thereby rendering those rulings final for preclusion purposes. (See *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1174 ["the finality required to invoke the preclusive bar of res judicata is not achieved until an appeal from the trial court judgment has been exhausted or the time to appeal has expired"].) But directing the trial court to deny the petition in its entirety would imply the Board prevailed on the merits of all claims raised in the petition. We have found the claims at

issue on appeal are moot and we express no opinion on their merits. As Petitioner notes, a reversal for this reason "does not imply approval of a contrary judgment, but is merely a procedural step necessary to a proper disposition of this case." (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 135.)

Instead, we conclude that the appropriate disposition is to reverse and remand with directions to the trial court to dismiss as moot the appealed claims—the claims that the 2017 Regulations violated the Forest Practice Act with respect to the number of working forest landowners who could join a single working forest management plan and the erosion control information required to be included in a working forest management plan—and enter judgment on the petition's remaining claims. (See *Giles v. Horn, supra,* 100 Cal.App.4th at p. 229 ["we reverse that portion of the judgment that is based upon the County's failure to make a finding of economy and efficiency and direct the court to dismiss that portion of plaintiffs' claim as moot"].)

DISPOSITION

The judgment is reversed and remanded with directions to (1) dismiss as moot Petitioner's claims that the 2017 Regulations violated the Forest Practice Act with respect to the number of working forest landowners who could join a single working forest management plan and the erosion control information required to be included in a working forest management plan, and (2) enter judgment on the petition's remaining claims. The parties shall bear their own costs on appeal.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A155575)