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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LOS ANGELES TIMES COMMUNICATIONS, LLC, et al., Appellants, v. ARIK HOUSLEY et al., Respondents. COUNTY OF VENTURA, Real Party in Interest.	2d Civ. No. B310585 (Super. Ct. No. 56-2019-00523492-CU-WM-VTA) (Ventura County)

Appellants are media organizations reporting on the 2018 mass shooting at the Borderline Bar & Grill in Thousand Oaks.[1]

[1] Appellants include: Los Angeles Times Communications, LLC, owner of the Los Angeles Times newspaper; The Associated Press; and Scripps NP Operating, LLC, publisher of the Ventura County Star newspaper.

They challenge a preliminary injunction forbidding Real Party in interest County of Ventura (County) from releasing the autopsy reports of the eleven civilian victims. Respondents are family members of these victims and oppose disclosure.[2]

Appellants contend the trial court erred by issuing a preliminary injunction based entirely on its belief that a bill pending in the California Legislature might later shield the autopsy reports from disclosure under the California Public Records Act (CPRA). (Gov. Code, § 6250 et seq.)[3] We hold that while a trial court may consider a prospective change of law under narrow circumstances, such circumstances were not present here. The court erred when it issued the preliminary injunction without first assessing the probability of respondent families prevailing at trial under existing law. We decline, however, to usurp the province of the trial court and consider the propriety of the injunction sought by respondents. We remand the cause to the trial court for hearing.

FACTUAL AND PROCEDURAL BACKGROUND

Ian Long entered the Borderline Bar and Grill on the night of November 7, 2018, armed with a .45 caliber pistol, smoke

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[2] Respondents include: Arik and Hannah Housley, parents of Alaina Maria Housley; Lorrie and Dan Dingman, parents of Blake Dingman; Cheryl Gifford-Tate, mother of Cody Coffman; Elsa and Mario Manrique, parents of Dan Manrique; Laura Lynn Meek and Roger Meek, parents of Justin Meek; Martha and Michael Morisette, parents of Kristina Morisette; Theri Ramirez, Mark Meza, Sr., and Kelly Marsh, parents of Marky Meza; Fran Adler, wife of Sean Adler; and Susan Schmidt-Orfanos and Marc Orfanos, parents of Telemachus Orfanos.

[3] All further unlabeled statutory references are to the Government Code.

bombs, and fireworks. He mortally wounded eleven patrons before ambushing law enforcement officers as they attempted to enter the building. Sergeant Ron Helus of the Ventura County Sheriff's Office suffered six bullet wounds but continued to exchange fire before succumbing. The shooter then shot and killed himself.

The Ventura County Medical Examiner performed autopsies on all who died. The agency initially declined requests to disclose the autopsy reports, citing the CPRA's exemption for records of ongoing law enforcement investigations. (§ 6254, subd. (f).) Reports for the shooter and Officer Helus were eventually released after appellants and other news organizations sued to compel disclosure of Borderline-related records in April of 2019. The reports for the eleven civilian victims, however, remained confidential while the District Attorney's Office and Sheriff's Office completed their investigations.

Respondents grew increasingly concerned about disclosure of the remaining autopsy reports as the investigations concluded. They filed a "reverse CPRA" action[4] in June of 2020 to permanently enjoin the Medical Examiner from doing so. They alleged disclosure would violate their own privacy rights by spreading graphic details about their loved ones' injuries. Respondents described how they were receiving calls and emails

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[4] See *City of Los Angeles v. Metropolitan Water Dist. of Southern California* (2019) 42 Cal.App.5th 290, 297 [reverse-CPRA suits are "viewed as necessary to protect the privacy rights of individuals whose personal information may be contained in government records, because CPRA provides no mechanism for notifying such individuals of the requested disclosure and does not specifically authorize actions to prevent disclosure"].)

from people insisting the attack was a hoax or plot intended to spur gun control legislation. Placing additional reports into the public realm, they alleged, would only promote their ongoing victimization by those promoting conspiracy theories and fringe political agendas.

The trial court consolidated appellants' CPRA action with respondents' reverse-CPRA action.[5] The families obtained an *ex parte* temporary restraining order in December 2020 after the County told them of its intention to disclose the autopsy reports by month's end. Argument at the hearing focused on recently introduced legislation, Assembly Bill 268 (AB 268), that proposed a statutory procedure for family members to seal a loved one's autopsy report. The trial court issued a preliminary injunction ordering the County to withhold the victim's reports until the legislature acted on the bill. It deferred ruling on the merits of the parties' CPRA dispute in the interim. The media organizations appealed. AB 268 remains in committee as of the date of this opinion.[6]

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[5] The order designated *Ventura County Deputy Sheriff's Association v. County of Ventura* (Case No. 56-2019-00523492) as lead case in the consolidated action. That case was the subject of an earlier, unrelated writ proceeding in *Howeth v. Superior Court* (Case No. B298858) and an appeal in *Ventura County Deputy Sheriff's Association v. County of Ventura* (Case No. B300006).

[6] Appellants requested judicial notice of facts related to the legislative history of AB 268 as well as media stories related to the Borderline mass shooting. The request is granted as to fact number 35, i.e., that "[t]he legislative session again ended on September 10, 2021, without the Legislature amending the law to restrict access to autopsy reports," pursuant to Evidence Code section 452, subdivision (c). The requests are otherwise denied.

DISCUSSION

Appellants and respondents invoke equally tenable positions concerning the integrity of government institutions and the dignity of the families. However, only two factors governed the trial court's preliminary injunction determination: "'(1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. [Citation.]'" (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177; see Code Civ. Proc., § 526, subd. (a).) We reverse only if the trial court abused its discretion as to both factors. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286-287.) We review questions of law *de novo*. (*Donahue Schriber Realty Group, Inc.* at p. 1176.)

The trial court correctly observed that disclosing the victims' autopsy reports pending trial would in effect dispose of the families' reverse-CPRA action. "Privacy once invaded," it remarked, "cannot retroactively be again made private." The appearance of a potential legislative solution on the horizon, however, did not allow the court to bypass a meaningful analysis into the prerequisites for issuing a preliminary injunction – particularly the families' likelihood of prevailing on the merits of their case at trial. It is well settled that an appellate court reviewing a claim for injunctive relief must "apply the law currently in effect." (*Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 837.) The same is true of the trial court. It was required to apply the law then in effect, not as it might be if the law were amended as proposed by legislators. (*People ex rel. Bellflower v. Bellflower County Water Dist.* (1966) 247 Cal.App.2d 344, 350, quoting *People v. Righthouse* (1937) 10

Cal.2d 86, 88 ["'It has been uniformly held in this state that a statute has no force whatever until it goes into effect pursuant to the law relating to legislative enactments. It speaks from the date it takes effect and not before. Until that time it is not a law and has no force for any purpose.'"].)

We recognize the dilemma faced by the trial court at the preliminary injunction hearing. Determining a moving party's likelihood of prevailing on the merits at trial must, of course, take into consideration the law that will apply to the dispute *at trial*. A looming, seismic shift in the statutory framework governing a pending dispute can raise well-founded concerns about case management and trial preparation. The signing of a bill, for example, could justify a brief trial continuance if the law's effective date lands mid-trial and creates uncertainty over which version of the law applies. The same might be true if the bill were passed but awaiting the Governor's approval or veto.[7]

Such was not the situation here. The trial court did not know if or when AB 268 might pass, and, assuming it did, what form it would take once reconciled, and, if signed, codified. While it need not have made a final decision at this procedural stage, the court should have looked deeper into the substance of the dispute to determine whether "there is a reasonable probability that plaintiff will be successful in the assertion of his rights." (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) The preliminary injunction factors are two sides of the same coin; the families' showing of interim harm must be accompanied by a reasonable probability of success at trial. A compelling demonstration of one or the other is not enough. The trial court

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[7] The Governor must generally approve or veto a bill within 12 days of the Legislature presenting it for signature. (Cal. Const., art. IV, § 10.)

erred by delaying this admittedly difficult task and compounded the problem by issuing an order of indeterminate duration. As a result, it effectively stayed the consolidated cases for the duration of the 2021-2022 legislative session. This it cannot do. We well understand that ruling in favor of appellants is, by any measure, a final ruling. We remand the case with instructions to re-calendar and decide respondent's motion on its merits.

DISPOSITION

The trial court erred when it granted respondents' motion for preliminary injunction. The current injunction shall remain in place the shorter of: (1) 60 days after the date of remand; or (2) the time needed to re-calendar and to decide the motion on its merits. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Henry J. Walsh, Judge
Superior Court County of Ventura

Law Offices of Kelly A. Aviles, and Kelly A. Aviles; Los Angeles Times Communications, and Jeffrey D. Glasser, for Appellants.

Flesher Schaff & Schroeder, Jacob D. Flesher and Virginia L. Martucci; Steptoe & Johnson, and Alice E. Loughran, for Respondents.

Tiffany N. North, County Counsel, and Emily T. Gardner, Principal Assistant County Counsel, for Real Parties in Interest County of Ventura.

Giffords Law Center to Prevent Gun Violence, Hannah E. Shearer and Esther Sanchez-Gomez, as amicus curiae for Respondents.

First Amendment Coalition, David E. Snyder, Glen A. Smith, and Monica N. Price, as amicus curiae for Appellants.

Claudia Y. Bautista, Ventura Public Defender, and Michael C. McMahon, Senior Deputy Public Defender, as amicus curiae for appellants.