NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN THOMAS CHRISTIANA, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; CITY OF HUNTINGTON BEACH et al., Real Parties in Interest.	G057447 (Super. Ct. No. 30-2017-00918017) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge orders of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Denied.

John Thomas Christiana, in pro. per., for Petitioner.

No appearance for Respondent.

Michael E. Gates, City Attorney, Brian L. Williams, and Daniel S. Cha, Deputy City Attorney for Real Parties in Interest.

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INTRODUCTION

Plaintiff John Thomas Christiana appeals from the order of dismissal of his action against the City of Huntington Beach (the City) and its Chief of Police Robert Handy (collectively, defendants). The trial court dismissed the action after it found plaintiff to be a vexatious litigant under Code of Civil Procedure section 391, subdivision (b)(1) and ordered plaintiff to post a $10,000 bond under section 391.3 which plaintiff failed to do. (All further statutory references are to the Code of Civil Procedure.)

Plaintiff contends he did not meet section 391, subdivision (b)(1)'s vexatious litigant definition because he had not commenced, prosecuted, or maintained, in propria persona, at least five "litigations" that were determined adversely to him. He also contends the trial court erred by finding it was not reasonably probable plaintiff would prevail in the action, based upon which finding the court ordered him to furnish security. He argues the trial court should have granted his motion for reconsideration of its rulings.

We exercise our discretion to treat plaintiff's appeal as a petition for a writ of mandate. We deny plaintiff writ relief with regard to each challenged ruling. Substantial evidence shows plaintiff commenced at least six actions that qualify as litigations under section 391, subdivision (b)(1); the court did not err by finding plaintiff a vexatious litigant. Substantial evidence also supports the trial court's finding it was not reasonably likely plaintiff would prevail on his false imprisonment, intentional infliction of emotional distress, and negligent infliction of emotional distress claims against defendants.

Plaintiff's claims are based on allegations he was wrongfully detained by law enforcement. The record shows that on February 21, 2017, plaintiff, who was registered with the City as a convicted arsonist, was scheduled to speak to the city council. During the meeting, he was briefly detained by law enforcement outside the city council chamber after he was observed with his shoulder bag near an open maintenance closet in a side hall before quickly walking toward the chamber. Finally, the trial court did not abuse its discretion by denying plaintiff's motion for reconsideration.

FACTS AND PROCEDURAL BACKGROUND

I.
THE AMENDED COMPLAINT

In October 2017, plaintiff filed an amended complaint against defendants asserting causes of action for false imprisonment, intentional infliction of emotional distress, and negligent infliction of emotional distress. The amended complaint contains the following summary of alleged wrongful conduct underlying plaintiff's claims: "Dating back to 2016, Defendants have a history of harassing and trying to intimidate Plaintiff because Plaintiff has contacted the Huntington Beach City Council by email as well as trying to speak at a Huntington Beach City Council meeting, to report abuse by Defendant Handy and the City of Huntington Beach. [¶] . . . On February 21, 2017 Plaintiff again tried to speak at a Huntington Beach City Council meeting to address the abuses by Defendants. Defendants lied to make [the] claim that Plaintiff was in a closet and Plaintiff walked too fast to speak at [a] Huntington Beach City Council Meeting. [¶] . . . Plaintiff was illegally detained for about 30 minutes and Defendant Handy called in an additional . . . five officers to video record the now incident and interrogate Plaintiff. Because of the history of Defendant's harassment and intimidation to Plaintiff, and the *planted* crystal methamphetamine in Plaintiff's belongings, as well as for the reasons that Plaintiff informed the City of Huntington Beach that he was a victim of targeted abuse

and was trying to speak to the Huntington Beach City Council about that, this caused the Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress described herewith in this Complaint."

II.

DEFENDANTS FILE A MOTION TO HAVE PLAINTIFF DECLARED A VEXATIOUS LITIGANT, FOR AN ORDER REQUIRING HIM TO POST SECURITY, AND FOR A PREFILING ORDER.

Defendants filed a motion for plaintiff to furnish security pursuant to section 391.1 and for a vexatious litigant prefiling order pursuant to section 391.7. In their moving papers, defendants identified and described the following 10 actions, initiated by plaintiff in propria persona and adversely determined against him, in support of their motion:

"(1) *Christiana v. Plotkin*, Los Angeles County Sup. Ct. Case No. SC115862—Plaintiff filed his complaint on February 6, 2012, based on the Defendant psychiatrist testimony as to Plaintiff's incompetence during the pendency of Plaintiff's prior criminal case. The trial court granted Defendant's Anti-SLAPP motion and entered judgment in favor of Defendant. [Citations.]

"(2) *Christiana v. Dogris*, Inyo County Sup. Ct. Case No. SICVCV120053246—Plaintiff filed his complaint in February 2012 against another psychologist who had assessed Plaintiff incompetent during his prior criminal action. The trial court granted the Defendant's demurrer and entered judgment in favor of Defendant. [Citation.]

"(3) *Christiana v. Thomas*, Orange County Sup. Ct. Case No. 30-2012-00542744-CU-MM-CJC—Plaintiff filed his complaint on February 6, 2012 against another psychologist who had assessed Plaintiff incompetent during his prior criminal action. The trial court granted the Defendant's demurrer and entered judgment in favor of Defendant. [Citation.]

"(4) *Christiana v. El Cajon Police Records Department*, San Diego County Sup. Ct. Case No. 37-2012-00065933-CU-BT-EC—Plaintiff filed his complaint on March 1, 2012, voluntarily dismissed Defendant El Cajon Police Department on March 16, 2012, and voluntarily dismissed the entire action with prejudice on April 9, 2012. [Citation.][1]

"(5) *Christiana v. Plotkin*, Court of Appeal of California, Second Appellate District, Division One, Case No. B244862—On October 31, 2012, Plaintiff filed his notice of appeal of the trial court's judgment for a Defendant psychologist who had testified Plaintiff was incompetent during his criminal case. The judgment was affirmed. [Citation.]

"(6) *Christiana v. Dogris*, Court of Appeal of California, Fourth Appellate District, Division Three, Case No. G050285—On January 9, 2013, Plaintiff filed his notice of appeal of the trial court's judgment for a Defendant psychologist who had testified Plaintiff was incompetent during his criminal case. The judgment was affirmed. [Citation.]

"(7) *Christiana v. Plotkin*, California Supreme Court Case No. S217574—On April 9, 2014, Plaintiff filed his petition for the Supreme Court to review of the Court of Appeals' opinion affirming judgment in favor of Defendant psychologist who had testified Plaintiff was incompetent during his criminal case. The petition was denied. [Citation.]

"(8) *Christiana v. Laguna Beach Police Department*, Orange County Sup. Ct. Case No. 30-2014-00751208-CU-PN-CJC8—Plaintiff filed his complaint on October 17, 2014 against the Laguna Beach Police Department for an allegedly negligent

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[1] In their appellate respondents' brief, defendants no longer rely on this litigation in support of their argument plaintiff met the vexatious litigant definition of section 391, subdivision (b)(1). For the reasons discussed *post*, the record shows six qualifying litigations under the statute without considering this litigation. Because the statute only requires five qualifying litigations, we do not consider this litigation further.

investigation. The court ordered the case dismissed for lack of prosecution on March 13, 2015; Plaintiff subsequently filed a Request for Dismissal on March 23, 2015. [Citations, fn. omitted.]

"(9) *Christiana v. Reinhardt*, Orange County Sup. Ct. Case No. 30-2017-00924024-CU-NP-CJC—Plaintiff filed his complaint on June 5, 2017, against his sister. On September 26, 2017, the court dismissed the action with prejudice upon a request for dismissal. [Citations.]

"(10) *Christiana v. United States and Its Agencies, et al.*, USDC Cent. Dist. of Cal. Case No. 8:l 7-cv-00089-DOC-JCG—Plaintiff filed his complaint on January 19, 2017 against 35 defendants including the City of Huntington Beach, City of Laguna Beach, the United States, private corporations, and various government agencies, officials, and elected officers. Plaintiff dismissed several defendants before or after they filed Motions to Dismiss—City of Huntington Beach was dismissed on February 27, 2017. Eventually, [the] remaining defendants' Motions to Dismiss were granted and Plaintiff's action was dismissed with prejudice, and Plaintiff's motion for reconsideration [was] denied. [Citations.]"

In addition to requests for judicial notice and defendants' counsel's declaration authenticating documents relevant to the above listed litigations, defendants' moving papers included Handy's declaration, which described the relevant events surrounding the February 21, 2017 incident as follows: Before 2017, as a condition of his probation from a 2011 felony arson conviction arising from an incident in Inyo County involving government property, plaintiff was registered with the City's police department as an arsonist. Also before 2017, plaintiff had made "outrageous allegations of a nationwide and local conspiracy of governmental abuse and torture." Given plaintiff's criminal history, in response to learning that he intended to attend the February 21, 2017 city council meeting, the City's police department arranged that the

undercover officer who would be present to provide additional security for the city council meeting be specifically assigned to observe plaintiff.

Handy's declaration further stated that Handy himself attended the meeting in full police uniform. During the public comments period, plaintiff exited the city council chamber. "Sometime thereafter, [he] saw Plaintiff rush past [him] to the City Council chamber carrying a shoulder bag." The undercover officer reported to Handy that he had seen plaintiff in or near an open maintenance closet off a side hallway; the doors at the end of that side hallway "lead to critical information systems infrastructure of City Hall." Handy explained in his declarations that generally members of the public do not enter the side hallway because there is no reason to unless authorized to access the maintenance closet or information systems infrastructure.

Handy declared: "Concerned for the safety of the City Councilmembers, members of the public, and staff, I detained Plaintiff. [¶] . . . While Plaintiff was detained, the Huntington Beach undercover officer performed a security sweep of the closet and eventually reported that he had confirmed with a maintenance worker that nothing appeared missing from, or planted in, the maintenance closet. [¶] . . . Once the investigation was completed, Plaintiff was informed he would have the opportunity to speak to the City Council, even though the public comments period had ended, since he had been detained through his speaking spot." Plaintiff refused to speak at that point and left.

Defendants also submitted excerpts from plaintiff's deposition testimony which largely corroborated Handy's summary of events on February 21, 2017. Plaintiff explained at his deposition that he went down the long side hallway near the open maintenance closet for the purpose of practicing the speech he planned to present to the city council. He testified he practiced his speech for a total of 10 to 15 minutes when he realized it was close to the time his name would be called to speak and made a "beeline" to the chamber, walking at a fast pace, to get back to the meeting. He testified he had his

black shoulder bag and yellow notepad with him. He also testified Handy approached him without making physical contact[2] and asked to talk with plaintiff outside the chamber. Plaintiff said he responded, "Okay." Handy told him to sit on a couch. After plaintiff said, "No," Handy again directed plaintiff to sit on the couch and plaintiff complied. About five minutes passed before several other officers arrived; Handy went "somewhere else" for about five or 10 minutes after he had initially made contact with plaintiff.

Plaintiff testified that when the officers asked him whether he had any weapons or drugs, he told them he did not. Plaintiff testified that generally the officers "were all very nice" and "were just saying they were just doing their job."[3] When asked if the officers could search his bag and his person, plaintiff said, "No." The officers did not conduct a search. Twenty to 30 minutes after he was initially contacted, plaintiff was informed that although the speaking portion of the meeting had ended, the city council would make a special exception for plaintiff and let him then speak. Plaintiff admitted that when he moved to the City in March 2011, he completed the arson registration with the City's police department, pursuant to his plea deal with the Inyo County prosecutor.

III.
THE TRIAL COURT GRANTS DEFENDANTS' MOTION AND DENIES PLAINTIFF'S MOTION FOR RECONSIDERATION.

The trial court granted defendants' motion, stating in its minute order: "Each action and each appeal qualify as separate actions, so there are nine eligible cases. Even if the appeals were removed, there are still six cases brought by plaintiff and dismissed in the last seven years." The trial court stated it deemed plaintiff a vexatious litigant, and required plaintiff to post $10,000 security, by bond or cash, within 30 days

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[2] Plaintiff testified at his deposition he did not remember Handy, or any officer, ever making physical contact with him during the incident. He stated he suffered emotional injuries but no physical injuries as a result of the incident.

[3] Plaintiff testified he thought one of the officers was "kind of smirky a little bit."

of the notice of the court's ruling. The court thereafter issued a vexatious litigant prefiling order prohibiting plaintiff, unless represented by an attorney, from filing any new litigation in any California court without the approval of the presiding justice or presiding judge of the court in which the action would be filed.

Plaintiff filed a motion for reconsideration of the court's orders on the following grounds: "There are new and different facts and circumstances, and the affidavit is attached. [¶] There is law (CCP § 391.1) that only requires a bond or cash security from the plaintiff when the Court finds there is not [a] reasonable probability that he will prevail in the litigation against the moving defendant. The Court has not found this. Defendants have misled the Court into requiring a security for this case. [¶] There is more than a reasonable probability, let alone a reasonability probability, that plaintiff will prevail in this action against Defendants." The trial court denied the motion for reconsideration.

IV.
AFTER PLAINTIFF FAILS TO FURNISH SECURITY, THE TRIAL COURT GRANTS DEFENDANTS' MOTION FOR JUDGMENT OF DISMISSAL.

Defendants filed a motion for an order and judgment of dismissal of the lawsuit pursuant to section 391.4 on the ground plaintiff had been declared a vexatious litigant and was ordered to furnish security in the amount of $10,000 by November 1, 2018, but did not do so. The trial court ordered the entire action dismissed without prejudice because plaintiff failed to post the bond. Plaintiff filed a notice of appeal.

DISCUSSION

I.
APPEALABILITY OF THE ORDER OF DISMISSAL

The clerk's transcript contains an unsigned minute order which states the "entire action" was dismissed without prejudice; it does not contain a signed order or

judgment. "A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) A dismissal order is appealable as a final judgment when the order complies with section 581d, which provides in part that "[a]ll dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case." A minute order which grants a motion to dismiss is "'"ineffectual and nonappealable; no appeal can be taken except from the order signed and filed."'" (*Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913, 919, fn. 5; see *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1578.) An appeal taken from a nonappealable order, therefore, must be dismissed because the appellate court is without jurisdiction to entertain it. (*Munoz v. Florentine Gardens* (1991) 235 Cal.App.3d 1730, 1732.)

We requested that the parties file supplemental briefs addressing whether a signed order of dismissal has been filed in this case. In their supplemental briefs, the parties confirmed no signed order of dismissal was filed. As plaintiff's appeal is not taken from an appealable order, we have no jurisdiction to hear this appeal.

We may, however, treat an improper appeal as a petition for a writ of mandate in unusual circumstances. (*Olson v. Cory* (1983) 35 Cal.3d 390, 400-401.) It is appropriate to treat an appeal from a nonappealable order or judgment as a petition for extraordinary writ when requiring the parties to wait for entry of final judgment might lead to unnecessary trial proceedings, the briefs and the record include the necessary elements for a petition for a writ of mandate, there is no indication the trial court would appear as a party in the writ proceeding, the appealability of the order was not clear, and all parties urge the court to decide the issue rather than dismiss the appeal. (*Ibid.*)

Here, the briefs and the record include the necessary elements for a writ of mandate and there is no indication the trial court would appear in a writ proceeding. Requiring the parties to procure a signed order of dismissal or judgment at this juncture might lead to unnecessary trial proceedings. The parties agree that the trial court intended to dismiss this case and urge this court to decide the issue on the merits. (See *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 404-405.) We conclude that given the specific circumstances of this case, this matter provides a sufficiently compelling situation to warrant treating this appeal as a writ petition and we therefore exercise our discretion to hear this matter as such.

II.
OVERVIEW OF THE VEXATIOUS LITIGANT STATUTES AND STANDARD OF REVIEW

"The vexatious litigant statutes (§§ 391-391.7) are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants. . . . [¶] 'Vexatious litigant' is defined in section 391, subdivision (b) as a person who has, while acting in propria persona, initiated or prosecuted numerous meritless litigations, relitigated or attempted to relitigate matters previously determined against him or her, repeatedly pursued unmeritorious or frivolous tactics in litigation, or who has previously been declared a vexatious litigant in a related action. Section 391.1 provides that in any litigation pending in a California court, the defendant may move for an order requiring the plaintiff to furnish security on the ground the plaintiff is a vexatious litigant and has no reasonable probability of prevailing against the moving defendant. The action is stayed pending determination of the motion. (§ 391.6.) If, after a hearing, the court finds for the defendant on these points, it must order the plaintiff to furnish security 'in such amount and within such time as the court shall fix.' (§ 391.3.) The plaintiff's failure to furnish that security is grounds for dismissal. (§ 391.4.)" (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169-1170.)

"'In 1990, the Legislature enacted section 391.7 to provide the courts with an additional means to counter misuse of the system by vexatious litigants. Section 391.7 "operates beyond the pending case" and authorizes a court to enter a "prefiling order" that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge. [Citation.] The presiding judge may also condition the filing of the litigation upon furnishing security as provided in section 391.3. (§ 391.7, subd. (b).)' [Citation.] [¶] Section 391.7 did not displace the remedy provided in sections 391.1 to 391.6 for defendants in pending actions; by its terms it operates '[i]n addition to any other relief provided in this title . . . .' (§ 391.7, subd. (a).) Rather, it added a powerful new tool designed 'to preclude the initiation of meritless lawsuits and their attendant expenditures of time and costs.'" (*Shalant v. Girardi, supra*, 51 Cal.4th at p. 1170.)

"'"A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and [infer] findings necessary to support the judgment." [Citation.] Questions of statutory interpretation, however, we review de novo.'" (*Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1169 (*Fink*).)

III.
SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING PLAINTIFF IS A VEXATIOUS LITIGANT.

Section 391, subdivision (b) provides four alternative definitions of a vexatious litigant. (*Fink, supra*, 180 Cal.App.4th at pp. 1169-1170.) Here, the trial court found applicable section 391, subdivision (b)(1) which provides a vexatious litigant is one who "[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably

permitted to remain pending at least two years without have been brought to trial or hearing."

Plaintiff challenges the order finding him to be a vexatious litigant on the ground he has not commenced, prosecuted, or maintained at least five separate qualifying litigations. Plaintiff does not challenge the accuracy of the descriptions for any of the 10 litigations identified in defendants' moving papers, quoted *ante*, and does not challenge defendants' evidence supporting those descriptions. He also does not argue that any of the litigations cited by defendants and relied upon by the trial court fell outside the timeframe imposed by section 391, subdivision (b)(1) or that he had not commenced, prosecuted, or maintained any of those litigations in propria persona.

Plaintiff tacitly concedes that the litigations identified in defendants' moving papers as litigation Nos. (8), (9), and (10) constitute three separate qualifying litigations for purposes of the statute. Litigation Nos. (1), (2), and (3) in defendants' moving papers count as three more qualifying litigations as they constitute three separate lawsuits filed by plaintiff in the superior court of three different counties against three different defendants. Because litigation Nos. (1), (2), (3), (8), (9), and (10) total six qualifying litigations in satisfaction of the statutory requirement of at least five qualifying litigations, we do not need to address whether plaintiff's unsuccessful appeals (identified as litigations Nos. (5) and (6)) in two of the three lawsuits, and his unsuccessful petition for review filed in connection with one of those two appeals (identified as litigation No. (7)) would each qualify as separate litigations under the statute.

Plaintiff argues defendant proved a total of only four qualifying litigations. He argues that because the three superior court actions identified as litigation Nos. (1), (2), and (3) were all based on alleged conduct that occurred during a common prior criminal case that had been prosecuted against him, all three must be counted together to

constitute a single qualifying litigation for purposes of section 391, subdivision (a).[4] Plaintiff's argument is without merit.

"The term 'litigation' is broadly defined in section 391, subdivision (a) as meaning 'any civil action or proceeding, commenced, maintained or pending in *any* state or federal court.'" (*Fink, supra,* 180 Cal.App.4th at p. 1170, italics added.) Litigation Nos. (1), (2), and (3) constitute three separate lawsuits filed in three different counties against three different defendants. Notwithstanding plaintiff's argument those three superior court actions had much in common, as each constituted a lawsuit against a mental health professional for his or her testimony regarding plaintiff's competence in the same prior criminal matter, the three lawsuits on their face constitute three separate qualifying litigations under section 391, subdivision (a). Consequently, those three litigations, combined with the three other litigations plaintiff concedes qualify under the statute (e.g., litigation Nos. (8), (9), and (10)), total six qualifying litigations in satisfaction of the minimum statutory requirement of five qualifying litigations.

As substantial evidence showed the requirements of section 391, subdivision (b)(1) were satisfied, the trial court did not err by declaring plaintiff a vexatious litigant.

IV.
THE TRIAL COURT DID NOT ERR BY REQUIRING PLAINTIFF TO POST SECURITY BECAUSE THERE WAS NO REASONABLE LIKELIHOOD PLAINTIFF WOULD PREVAIL IN THE ACTION.

Plaintiff argues the trial court erred by ordering him to post security based on the finding it was not reasonably likely he would prevail against defendants in this

[4] For the same reason, plaintiff further argues that his unsuccessful appeals identified as litigations Nos. (5) and (6) and his unsuccessful petition for review identified as litigation No. (7) also should be combined with litigation Nos. (1), (2), and (3) to constitute a total of one qualifying litigation. As we discussed *ante*, we do not need to address whether litigation Nos. (5), (6), or (7) constitute separate qualifying litigations and do not discuss them further.

action. In moving for an order requiring a vexatious litigant to post security,[5] the defendants had the burden of showing there was no reasonable likelihood plaintiff would prevail in the action. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 640, 642.) This showing is ordinarily made by the weight of the evidence, but a lack of merit may also be shown by demonstrating plaintiff cannot prevail as a matter of law. (*Ibid.*) The court's decision that a vexatious litigant does not have a reasonable chance of success in the action is based on an evaluative judgment in which the court weighs the evidence. If there is any substantial evidence to support the court's determination, it will be upheld. (*Id.* at p. 636.)

The trial court's finding it was not reasonably likely plaintiff would prevail against defendants on his claims for false imprisonment, intentional infliction of emotional distress, and negligent infliction of emotional distress is supported by substantial evidence. Plaintiff's claims are based on his allegations that Handy acted wrongfully when he briefly detained plaintiff on February 21, 2017 as plaintiff rushed into a meeting in the city council's chamber. Substantial evidence showed Handy's conduct would not give rise to liability under the amended complaint.

The record shows that before the detention, Handy knew plaintiff had previously been convicted of arson involving government property. Plaintiff had a history of grievances against the City and was scheduled to speak that night to the city council. After plaintiff was observed leaving the city council chamber, walking down a side hall near an open maintenance closet and the City's computer system, and rushing back toward the chamber 15 minutes later, Handy stopped plaintiff and asked him to sit down on a couch in the hall so that Handy and other officers could confirm that plaintiff was not immediately dangerous to the councilmembers, employees, or members of the public.

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[5] Plaintiff does not challenge the amount of security he was ordered to post.

Twenty to 30 minutes after plaintiff was first confronted by Handy, during which time officers had the opportunity to investigate whether anything had been removed from or placed inside the maintenance closet and to ask plaintiff whether he was in possession of weapons or drugs, plaintiff was invited back into the chamber to address the city council. Plaintiff declined and left the building at that time. During the period he was detained, plaintiff's refusal to consent to a search of his bag or his person was honored by the officers; there is no dispute plaintiff could refuse to be searched. None of the officers made physical contact with plaintiff or brandished a weapon. Plaintiff testified at his deposition that the officers were very nice to him.

On these largely undisputed facts, it is not reasonably likely plaintiff would have prevailed in proving defendants (1) acted without lawful privilege in briefly detaining plaintiff so as to constitute liability for false imprisonment (see *City of Newport Beach v. Sasse* (1970) 9 Cal.App.3d 803, 810; *People v. Celis* (2004) 33 Cal.4th 667, 674 ["an investigative detention allows the police to ascertain whether suspicious conduct is criminal activity"]); (2) engaged in any extreme and outrageous conduct with the intention of causing or with reckless disregard of the probability of causing plaintiff emotional distress (see *Crouch v. Trinity Christian Center of Santa Ana, Inc.* (2019) 39 Cal.App.5th 995, 1007); or (3) were negligent in the handling of the investigatory detention of plaintiff on February 21, 2017 so as to render them liable to plaintiff for emotional distress damages (see *Ess v. Eskaton Properties, Inc.* (2002) 97 Cal.App.4th 120, 126 ["Negligent infliction of emotional distress is not an independent tort; it is the tort of negligence to which the traditional elements of duty, breach of duty, causation, and damages apply"]).

The trial court therefore did not err by ordering plaintiff, as a vexatious litigant, to post security under section 391.3 or by dismissing the action under section 391.4 when he failed to do so.

V.
MOTION FOR RECONSIDERATION.

We review the order denying plaintiff's motion for reconsideration for abuse of discretion. (*County of Los Angeles v. James* (2007) 152 Cal.App.4th 253, 256.)[6] Plaintiff's motion for reconsideration reiterated arguments the trial court previously considered and rejected. In addition, the trial court did not abuse its discretion by denying the motion for reconsideration notwithstanding plaintiff's showing that Handy had previously stated in discovery responses that he believed plaintiff had been inside the maintenance closet on the night in question and later declared plaintiff was *either* inside or near the maintenance closet. Plaintiff's showing did not establish Handy had perjured himself or that Handy and the other officers were unjustified in briefly detaining plaintiff.

[6] "An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (§ 1008, subd. (g).)

DISPOSITION

The petition for writ of mandate is denied. Respondents to recover costs.

FYBEL, ACTING P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.

I, KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of the original of this document/order/opinion filed in this court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

February 01, 2022

KEVIN J. LANE, CLERK

By Deputy Clerk