Filed 9/4/26

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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| RAUL VELAZQUEZ GUZMAN,<br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF SACRAMENTO COUNTY,<br>Respondent;<br><br>NATHAN SCOTT WIGLE,<br>Real Party in Interest. | C105049<br><br>(Super. Ct. No. 34-2022-00319455-CU-PA-GDS) |

ORIGINAL PROCEEDING in mandate or prohibition. Petition denied. Steven M. Gevercer, Judge.

Gavrilov & Brooks, Michael Coleman, Ognian Gavrilov, Eliezer Cohen and Priscilla M. Parker for Petitioner.

No appearance for Respondent.

Lewis Brisbois Bisgaard & Smith, Raymond K. Wilson, Jr., and Corinne C. Bertsche for Real Party in Interest.

Code of Civil Procedure[1] section 995.240 permits courts, in their discretion, to waive a bond provision "if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties." This appeal hinges on the word *indigent*, for which "there is no rigid standard." (*Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 434 (*Alshafie*).)

Real party in interest and defendant Nathan Scott Wigle filed a petition for relief under section 995.240 for a bond required to stay, pending appeal, a $20 million personal injury judgment that a jury awarded petitioner and plaintiff Raul Velazquez Guzman. Wigle declared in his motion for relief that though he has about $1.75 million of assets, he was unable to obtain the necessary bond exceeding $30 million. The trial court granted relief and lowered the bond to $1.25 million. Guzman filed a petition for writ of mandate or prohibition challenging this order, arguing Wigle is not indigent as required by section 995.240.

We deny the petition, concluding "indigent" means any person who is unable to obtain sufficient sureties, not just a person who is destitute. (*Family Violence Appellate Project v. Superior Court* (Aug. 10, 2026, S288176) __ Cal.5th __ [p. 29], fn. 3 (*Family Violence*) ["the right to proceed in forma pauperis extends to any litigant who cannot reasonably afford the costs necessary to access the judicial process"].) We also reject several legal challenges Guzman makes to the evidence required under section 995.240.

FACTUAL AND PROCEDURAL BACKGROUND[2]

A jury found Wigle negligent and awarded Guzman $18,512,253.94 in total damages. The trial court also awarded Guzman recoverable costs and interest for a total

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[1] Further undesignated section references are to the Code of Civil Procedure.

[2] The parties each filed a request for judicial notice and we deny both. Guzman seeks judicial notice of a California Law Revision Commission report, which is authority

judgment against Wigle of over $20 million. Wigle filed a motion under section 995.240 to waive the bond required by section 917.1 to stay enforcement of a judgment pending appeal. In support of this motion, Wigle attached a declaration identifying the net value of his major assets: $408,666 for a primary residence; $560,000 total for two rental condos; $121,000 for checking and savings accounts; $525,000 for a brokerage account; a $24,000 treasury bill; a $107,000 certificate of deposit; and $3,700 for a car. Wigle stated that even if he liquidated all of his assets it would not be sufficient to post the required $31 million bond with a surety company or post a $41 million bond without a surety company. Wigle requested the trial court waive the bond or lower it to his insurance policy's limit of $1.25 million.

The trial court held a hearing on the motion and noted there was no declaration establishing costs for various bond levels. The court questioned defense counsel on whether Wigle "would still be indigent if it was a [$]2.5 million[ bond]," and defense counsel said "[p]robably not." The court also noted it found persuasive the argument indigency within the statute is tied to a lack of an ability to obtain sufficient sureties. The court then ordered the parties to submit additional declarations.

Wigle submitted a supplemental declaration with a letter from a bond broker, working with 12 sureties, that provided estimates for the annual premiums and collateral necessary to obtain appellate bonds at three levels. For a $1.25 million bond the annual premium would be between $9,375 and $12,500 but would require Wigle's insurance to guarantee payment of $1.25 million. For a $2.5 million bond the annual premium would

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not requiring judicial notice for our review. (See *Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 410, fn. 7 [" 'A request for judicial notice of published materials is unnecessary. Citation to the materials is sufficient' "].) Wigle seeks judicial notice of an article written by Guzman's counsel, which is not relevant to the issues on appeal. (See *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66, 72, fn. 3 [denying requests for judicial notice for irrelevant documents].)

be between $16,875 and $37,500 and require the insurance company to guarantee $1.25 million and Wigle to provide additional collateral of $1.25 million. For a bond covering the entire statutorily required amount of roughly $31 million, the annual premium would be between $156,388 and $390,971 and require Wigle to provide over $30 million in collateral. Wigle stated he could not afford the $2.5 million bond or the $31 million bond as either bond "would render [Wigle] incapable of paying [his] mortgages, providing for [him]self and [his] family, and would significantly reduce the assets available to pay for the judgment against [him] should [his] appeal fail."

The trial court issued a written order granting Wigle relief under section 995.240, stating: "In light of the amount of judgment entered in this matter, [Wigle] qualifies for discretionary relief under … section 995.240. Accordingly, [Wigle] is ordered to post bond, by December 1, 2025, in the amount of $1,250,000, in order to stay enforcement of the judgment."

Guzman filed a petition for writ of mandate or prohibition and we issued an order to show cause.

## DISCUSSION

Guzman argues the "trial court erred as a matter of law" by granting Wigle relief under section 995.240. Guzman's central contention is the trial court misinterpreted the statute because it requires the petitioner to be both indigent and unable to obtain sufficient sureties, and Wigle is not indigent "as a matter of law." Guzman also asserts Wigle did not supply legally sufficient evidence to support the petition. We conclude the trial court did not make any legal error.

### I

### *Legal Standards*

A judgment or order for the payment of money is not stayed by the perfecting of an appeal unless an undertaking is given. (§ 917.1, subd. (a).) "The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order." (§ 917.1, subd. (b).) "The court may, in its discretion, waive a provision for a bond … if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties." (§ 995.240.) The trial court "shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the … bond is waived." (*Ibid*.)

We review the trial court's order under section 995.240 for abuse of discretion. (*Alshafie*, *supra*, 171 Cal.App.4th at p. 431.) "An exercise of discretion will be disturbed on appeal only if the court exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice." (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434.) The deference the abuse of discretion standard "calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted.)

II

*Section 995.240 Does Not Limit Relief To The Destitute*

We first address the interpretation of section 995.240. Guzman's central disagreement with the trial court's interpretation is on the definition and application of the word "indigent." Guzman contends indigency means "extreme poverty." Thus, he contends, the trial court erred by finding indigency is tied to ability to obtain sufficient sureties and finding Wigle indigent because he has "substantial liquid assets" so "he cannot possibly be deemed 'indigent' as that term is generally understood." We conclude the trial court correctly applied the statute.

" ' " ' "As in any case involving statutory interpretation, our fundamental task … is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning." ' " [Citation.] "[W]e consider the language of the entire scheme and related statutes, harmonizing the terms when possible." ' [Citations.] If the language of the statute is clear and unambiguous, there is no need for judicial construction and our task is at an end. If the language is reasonably susceptible of more than one meaning, however, we may examine extrinsic aids such as the apparent purpose of the statute, the legislative history, the canons of statutory construction, and public policy." (*Earnest v. Commission on Teacher Credentialing* (2023) 90 Cal.App.5th 62, 74.)

There is an ambiguity here. Indigent is not defined in the statute and traditionally "there is no rigid standard for the requisite showing of indigency." (*Alshafie*, *supra*, 171 Cal.App.4th at p. 434.) We must therefore look beyond the plain language to better understand the meaning and application of indigent within section 995.240.

We start with the common law because "section 995.240 codifies the common law authority of the courts to exempt an indigent from an undertaking requirement." (*Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 346.) *Conover v. Hall* (1974) 11 Cal.3d 842 is often cited as a case exemplifying the common law codified in section 995.240. (Recommendation Relating to Statutory Bonds and Undertakings (Nov. 1981) 16 Cal. Law Revision Com. Rep. (1982) p. 518; *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 740, fn. 9 ["[§ 995.240] codified the common law authority of the courts recognized in *Conover*"].) In that case, our Supreme Court found, in part, the trial court had discretion to waive an undertaking for a preliminary injunction because the "plaintiffs obviously could not afford to post the significant undertaking that would be necessary to cover the substantial costs resulting from the application of the preliminary injunction over the entire statewide welfare program." (*Conover*, at pp. 852-853.) Our Supreme Court did not grant relief based on a clear level of poverty and whether the parties were above or below that level. The court instead looked at the parties' ability to pay the obligation necessary to post the undertaking.

Our Supreme Court confirmed this understanding of *Conover* in *Family Violence*, *supra*, __ Cal.5th __.[3] There, our Supreme Court found courts have a ministerial duty under "the in forma pauperis doctrine to provide indigent litigants, upon request, with meaningful access in all cases to an official verbatim record of proceedings, including by means of electronic recording if an official reporter or official reporter pro tempore is unavailable." (*Id*. at pp. __ [pp. 34-35].) The primary concern was access to justice. In a prior case, *Jameson v. Desta* (2018) 5 Cal.5th 594, 605, the court observed courts "have the inherent discretion to facilitate an indigent civil litigant's *equal access* to the judicial process even when the relevant statutory provisions that impose fees or other expenses do not themselves contain an exception for needy litigants." (Italics added.) In *Family Violence*, the court affirmed this principle, concluding: "The continued failure of the superior courts to provide indigent litigants with a means of obtaining an official verbatim record deprives them of 'meaningful access to the judicial process' ([*Jameson*,] at p. 606), triggering the courts' inherent power to take steps to ensure that 'indigent litigants are not, as a practical matter, denied their day in court' ([*Jameson*,] at p. 605)." (*Family Violence*, at p. __ [p. 29].)

Our Supreme Court in *Family Violence* also confirmed there is no generally applicable definition of indigency. The court stated: "Although our discussion primarily refers to indigent litigants, we do not suggest some absolute standard of indigency. Instead, the right to proceed in forma pauperis extends to any litigant who cannot

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[3] *Family Violence* was filed after briefing concluded in this case but prior to oral argument. Through a focus letter, we requested the parties discuss this case during oral argument, which they did. Consequently, we did not request supplemental briefing on the issue.

reasonably afford the costs necessary to access the judicial process. In this case, the litigants at issue include all litigants who cannot afford to hire a private court reporter to provide an official verbatim record of their proceeding. Because the costs involved in hiring a private court reporter can be significant, the population of litigants who cannot afford to hire a private court reporter, but who can afford to pay routine court fees and costs, may be large. Courts should be flexible in assessing a litigant's ability to pay. We have previously rejected the contention that 'a formal in forma pauperis application is required before relief can be granted.' (*Conover*, *supra*, 11 Cal.3d at p. 852.)" (*Family Violence*, *supra*, __ Cal.5th at p. __ [p. 29], fn. 3.)

This analysis establishes indigency is dependent on access to courts which may vary depending on the burden imposed. Indigency is often applied to those with the most meager of resources because even being required to pay basic court fees could deny them the "necessities of life." (*Earls v. Superior Court* (1971) 6 Cal.3d 109, 117.) But "a litigant need not render himself,[ herself, or themselves] absolutely destitute before being entitled to the protections of the common law or statutory procedures." (*Markley v. Superior Court* (1992) 5 Cal.App.4th 738, 749; see *Adkins v. E.I. DuPont de Nemours & Co.* (1948) 335 U.S. 331, 339 ["We cannot agree with the court below that one must be absolutely destitute to enjoy the benefit of the statute"].) Instead, indigency is dependent on the obligation imposed. For example, someone who can pay court costs may not be indigent in that circumstance, but may be indigent for purposes of affording an attorney. (See Black's Law Dict. (9th ed. 2009) p. 842, col. 2 ["indigent defendant" is "[a] person who is too poor to hire a lawyer"].) Or, as our Supreme Court concluded in *Family Violence*, litigants may be indigent if unable to pay for a court reporter, which could include a "large" population. (*Family Violence*, *supra*, __ Cal.5th at p. __ [p. 29], fn. 3.) There is no "absolute standard of indigency." (*Ibid*.; see *Alshafie*, *supra*, 171 Cal.App.4th at p. 434 ["there is no rigid standard for the requisite showing of indigency"].) There is instead a relative benchmark based on the costs inhibiting access to courts.

Section 995.240 permitting waiver of appellate bonds furthers the goal of equal access to the judicial process. As another court found: "The trial court's authority to waive an appeal bond required by section 917.1 for an indigent party under section 995.240 is consistent with principles 'afford[ing] indigent civil litigants the ability to obtain meaningful access to the judicial process in a great variety of contexts.' " (*Sarkany v. West* (2022) 82 Cal.App.5th 801, 809.) Though an appeal may be filed without a bond, considerations of immediate judgment enforcement will necessarily impact a litigant's strategy in seeking and executing an appeal. And those litigants who can afford a bond will be in a better position to assert their rights than those who cannot. (Cf. *Family Violence*, *supra*, __ Cal.5th at p. __ [p. 29] ["Wealthier litigants can be assured that an official verbatim record of their proceedings will be available, whereas indigent litigants cannot. Wealthier litigants can be assured they will not be forced to accept a continuance based on official reporter unavailability, whereas indigent litigants cannot"].)

Defining indigency based on access is also consistent with the discretion both section 995.240 and the common law give courts. The section states "[t]he court *may*, in its *discretion*" and "[i]n exercising its *discretion* the court shall take into consideration all factors *it deems relevant*." (§ 995.240, italics added.) And traditionally "California courts … have the *inherent discretion* to facilitate an indigent civil litigant's equal access to the judicial process." (*Jameson v. Desta*, *supra*, 5 Cal.5th at p. 605, italics added.) Limiting indigency to a narrow subset of destitute petitioners would necessarily limit the trial court's discretion to grant relief when considering access to courts. And this limitation on discretion would be ill-defined because there is no definition of indigent in the statute and no rigid definition at common law. Thus, there is no support in the text or in the interpretive aids at our disposal for an interpretation drawing a clear line for eligibility under section 995.240 based on a specific level of wealth.

This problem underlies Guzman's arguments. Guzman contends this interpretation is against "the legislative purpose of the statute," which "was not designed to absolve a millionaire defendant of his obligation to satisfy a judgment against him or post a bond pending appeal, particularly where his victim is indigent in-fact." But these assertions are not based on a clear countervailing definition of indigent. Guzman argues indigent is not someone who has "substantial means" but is someone in "extreme poverty" without defining these ambiguous phrases in a way that draws a clear distinction between the two in every circumstance. Moreover, Wigle is not absolved of his obligation to eventually satisfy the judgment should he lose on appeal, he is not absolved of his obligation to post a bond, and the trial court did not ignore the impact on Guzman. Instead, the trial court found Wigle qualified for discretionary relief given the judgment amount and it ordered a bond to a level it determined Wigle could obtain after it took "into consideration all factors it deem[ed] relevant, including … the potential harm to the beneficiary if the provision for the bond is waived." (§ 995.240.)

Guzman's argument also clashes with the core concern of access to the courts by assuming this right is inapplicable above certain net worths, regardless of the burden. But an inability to post a bond can inhibit access for many levels of wealth. One litigant who cannot afford to post a large bond exceeding their high net worth may, under certain circumstances, lack access to the courts similarly to another litigant who cannot afford to do so at a lower level exceeding their more meager resources. (See *Family Violence*, *supra*, __ Cal.5th at p. __ [p. 29].) Access is impeded in both cases. And the statute protects against abuse by permitting the trial court to impose a lower bond, which the opposing party can challenge as an abuse of discretion. Thus, neither the statute nor the common law automatically disallows relief where a bond exceeding $30 million could render a petitioner unable to obtain sufficient sureties to effectively prosecute their appeal without the threat of immediate judgment enforcement, even if that petitioner is not in extreme poverty.

We therefore conclude it not an abuse of discretion as a matter of law to provide relief to a petitioner under section 995.240 who may not be destitute. Instead, trial courts retain discretion to evaluate each request for relief under the statute and against the traditional understanding of indigency that is tied to equal access to justice. Permitting this discretion does not automatically require waiver of a bond for large judgments. A court instead must consider all factors it deems relevant, including "potential harm to the beneficiary," to determine the appropriate relief, if any, given the bond amount required and the petitioner's relative indigency. (§ 995.240; see *Family Violence*, *supra*, __ Cal.5th at p. __ [p. 29], fn. 3 ["Courts should be flexible in assessing a litigant's ability to pay"].) The trial court did not err by making this legal determination.

III

*Guzman Does Not Establish Evidentiary Error*

In addition to arguing for a narrow reading of indigent, Guzman challenges the evidence Wigle submitted. Guzman first contends Wigle's statements in his declaration about the costs to obtain the bond "are double hearsay for which there is no exception" and Wigle needed to submit a declaration "from the broker himself." Guzman also complains Wigle "failed to provide *any* information of his monthly or annual income or of his monthly and annual expenses, data he claims to have 'carefully' analyzed in preparing his declaration." Finally, Guzman asserts, "There is absolutely no evidence to suggest Wigle made any *effort* to obtain a bond or surety." (Underscoring omitted.) We conclude there was no error here either.

Initially, the plain language of section 995.240 does not include this evidence as requirements. Nowhere in the statute is a requirement for a declaration from a bond broker, a requirement the petitioner made an effort to obtain a bond, or a requirement that declaratory evidence may not contain hearsay. The latter would also be an exemption from section 2009 that generally permits declaratory evidence to support motions notwithstanding hearsay. (*North Beverly Park Homeowners Assn. v. Bisno* (2007) 147 Cal.App.4th 762, 778 ["under section 2009, affidavits and declarations may be used in support of a motion, even though they are hearsay"]; *McDonald v. Superior Court* (1994) 22 Cal.App.4th 364, 370 ["[The petitioner's] personal declaration under penalty of perjury as to her financial condition and its impact on her ability to proceed with the litigation was competent evidence"].)

This case is also substantially different than the case Guzman cites, *Cardinal Care Management, LLC v. Afable* (2020) 47 Cal.App.5th 1011, where the petitioners "provided no details of their financial situation" and simply "averred that they lacked financial ability to post the undertaking." (*Id*. at p. 1019.) Here, Wigle did aver to a lack of financial ability, but supported this with a list of his financial assets and how these compared to the financial requirements of obtaining bonds at different levels. This was unlike *Cardinal Care*.

Finally, in asserting "[t]here is absolutely no evidence to suggest Wigle made any *effort* to obtain a bond or surety" (underscoring omitted), Guzman misinterprets a case that stated: "Absent a showing of an unsuccessful effort to obtain a bond or surety," petitioners have "failed to meet the preliminary prerequisite for relief under … section 995.240." (*Williams v. Freedomcard, Inc.* (2004) 123 Cal.App.4th 609, 615.) But immediately preceding this statement the court said petitioners either made "no showing of any unsuccessful attempt to obtain a bond or undertaking" or "never showed even any attempt to contact a bonding or surety company." (*Ibid*.) The trial court here initially articulated a similar concern, telling Wigle there was no information on the costs of the various bond levels. But Wigle later contacted a bond company and submitted the requested information, which the trial court found sufficient to grant relief. This was enough to satisfy the legal requirements of the statute.

Beyond arguing absence of this evidence was legal error, Guzman does not contend granting Wigle relief on the information considered here was an abuse of discretion. For example, Guzman does not contend it was arbitrary and capricious to grant Wigle relief and order a $1.25 million bond based on Wigle's financial status and the associated expenses of the bonds. Having rejected these legal challenges, we therefore necessarily conclude Guzman has not established the trial court abused its discretion by granting Wigle relief under section 995.240.

DISPOSITION

The petition for writ of mandate or prohibition is denied. Real party in interest shall recover his costs on appeal. (Cal. Rules of Court, rule 8.493(a)(1)(A).)

/s/
ROBIE, J.

We concur:

/s/
EARL, P. J.

/s/
MAURO, J.