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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

ROBERT PIECHUTA et al.,
Plaintiffs and Respondents,
v.
LELIA HERNANDEZ,
Defendant and Appellant.

A132220

(Alameda County
Super. Ct. No. RG-08-424051)

A neighborhood dispute concerning the application of the Oakland View Ordinance (Oakland Mun. Code, § 15.52.010 et. seq.) led to litigation. Defendant Lelia Hernandez allegedly engaged in obstructive litigation tactics, including failing to comply with the trial court’s discovery orders. The court ultimately issued terminating sanctions and entered a default judgment granting a permanent injunction in favor of plaintiffs Robert Piechuta, Lynn Derderian, and Virginia Lew. As defendant’s appeal raises no cognizable legal issues, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Lew purchased her home on Leimert Boulevard in Oakland in 1975. At the time, the home had a 180-degree unobstructed view of the San Francisco Bay. Piechuta and Derderian bought a home next door to Lew in 1989. The couple was attracted to the area by the bay view. Also in 1989, defendant bought a house situated on the down-slope from plaintiffs’ properties. When Lew purchased her home, the property defendant now

owns did not have trees or vegetation blocking her view. Most of the trees that are currently on defendant's property were planted in the 1980's and 1990's.

Over time, the parties developed a hostile relationship, with much of the hostility centering on the plaintiffs' desire to trim certain trees growing on defendant's property in order to maintain their unobstructed views. Eventually, plaintiffs contacted an attorney.

On September 24, 2008, plaintiffs' attorney wrote defendant a letter describing the View Ordinance¹ and detailing the issues created by her trees. Included with the letter was a report prepared by a consulting arborist. Defendant did not respond to the letter.

On November 13, 2008, plaintiffs' attorney telephoned defendant regarding the issues. Defendant indicated she was not interested in resolving the matter and said she welcomed litigation.

On December 8, 2008, plaintiffs filed a complaint against defendant for declaratory and injunctive relief, as well as damages. The complaint alleges defendant's property was not in compliance with the View Ordinance and that her trees constituted a spite fence under Civil Code section 841.4.²

On February 17, 2009, plaintiffs filed their proof of service of the summons and complaint. The document indicates service was not achieved until after the process server had made multiple unsuccessful service attempts.

On March 5, 2009, plaintiffs' attorney responded to a telephone call from defendant and sent her courtesy copies of the summons and complaint, and extended the time to answer the complaint to March 16, 2009.

On March 17, 2009, plaintiffs requested and received an entry of default from the trial court.

¹ The View Ordinance was enacted "to establish standards for the resolution of view obstruction claims so as to provide a reasonable balance between tree and view related values for both private views and protected public views corridor." (Oakland Mun. Code, § 15.52.010.)

² Civil Code section 841.4 provides: "Any fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance. Any owner or occupant of adjoining property injured either in his comfort or the enjoyment of his estate by such nuisance may enforce the remedies against its continuance prescribed in Title 3, Part 3, Division 4 of this code."

On April 22, 2009, defendant filed a motion to vacate the default.

On July 28, 2009, defendant's motion to set aside the default was denied.

Defendant subsequently retained legal counsel. Counsel sought reconsideration, which the trial court granted.

On December 21, 2009, defendant filed a cross-complaint against plaintiffs, alleging causes of action for breach of contract, trespass, nuisance, intentional infliction of emotional distress and intentional interference with contractual relations.

Also on December 21, 2009, defendant answered the complaint.

On March 29, 2010, the parties engaged in mediation and arrived at a tentative settlement. Thereafter, defendant's attorney did not respond to plaintiffs' attorneys' efforts to finalize the agreement.

On July 29, 2010, defendant's attorney substituted out of the case, leaving her in pro per status.

In preparation for litigation, plaintiffs served discovery requests on defendant. She did not respond to their requests. Specifically, she failed to respond to written discovery requests, did not appear for her deposition, and failed to allow an inspection of her property.

On October 8, 2010, plaintiffs filed a motion to compel discovery and for monetary, evidentiary and terminating sanctions. The motion also requested that defendant's cross-complaint be dismissed.

On November 4, 2010, the trial court granted, in part, plaintiffs' motion to compel. Defendant was ordered to appear for her deposition and answer plaintiffs' interrogatories by November 29, 2010. The court imposed monetary sanctions and warned her that refusal to cooperate could result in further consequences, including imposition of terminating sanctions.

On December 7, 2010, plaintiffs sought an order terminating the case. The trial court denied, without prejudice, their request for shortening of time.

On December 9, 2010, defendant announced she had retained new counsel who agreed to try the matter provided the trial was continued. The trial court agreed to vacate

the existing trial date and reopen discovery. The order notes: “A copy of this order shall be mailed to attorney Michael Williams, *who will represent Defendant.*” (Italics added.)

Plaintiffs’ counsel contacted Williams to facilitate discovery, but made no progress. Subsequently, Williams stated in a declaration that he and defendant had been “unable to reach mutually acceptable terms of representation for [him] to represent her in this action.” Thereafter, defendant provided responses to the discovery that were unverified and, allegedly, “devoid of any information.”

On January 13, 2011, plaintiffs filed a motion for sanctions, including terminating sanctions.

On March 23, 2011, the trial court filed its order granting plaintiffs’ motion. The court struck defendant’s answer, dismissed her cross-complaint, and reinstated her default.

On April 19, 2011, plaintiffs filed their default prove-up package.

On April 28, 2011, the trial court entered a default judgment in the form of a permanent injunction. The judgment includes an award of \$132,516.80 in attorney fees and costs. This appeal followed.

DISCUSSION

We begin by setting forth the basic principles of appellate review. First, “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Because error is never presumed, it is every appellant’s duty to demonstrate error in the record the appellant produces before the reviewing court. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 628, p. 704.)

Second, “error alone does not warrant reversal. ‘It is a fundamental principle of appellate jurisprudence in this state that a judgment will not be reversed unless it can be shown that a trial court error in the case affected the result.’ [Citation.] ‘“The burden is on the appellant, not alone to show error, but to show injury from the error.”’ [Citation.] ‘Injury is not presumed from error, but injury must appear affirmatively upon the court’s examination of the entire record.’ [Citation.] ‘Only when an error has resulted in a

miscarriage of justice will it be deemed to be prejudicial so as to require reversal.’
[Citation.] A miscarriage of justice is not found ‘unless it appears reasonably probable
that, absent the error, the appellant would have obtained a more favorable result.’
[Citation.]” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822–823.)

Third, “It is incumbent upon the parties to an appeal to cite the particular portion
of the record supporting each assertion made. It should be apparent that a reviewing
court has no duty to search through the record to find evidence in support of a party’s
position.” (*Williams v. Williams* (1971) 14 Cal.App.3d 560, 565.) To that end,
California Rules of Court, rule 8.204(a)(1)(C), provides that a brief must “Support any
reference to a matter in the record by a citation to the volume and page number of the
record where the matter appears.”

Fourth, every argument presented by an appellant must be supported by both
coherent argument and pertinent legal authority. (*Berger v. California Ins. Guarantee
Assn.* (2005) 128 Cal.App.4th 989, 1007.) If either is not provided, the appellate court
may treat the issue as forfeited. (*Ibid.*)

We observe that defendant’s arguments on appeal are frequently unaccompanied
by citations to the record or to legal authority. Well over half of her brief consists of
factual allegations that are not supported by any citation to the record. It is not this
court’s responsibility to wade through the record in search of the bases for defendant’s
contentions. Nor are we required to engage in legal research to locate cases that support
her arguments. That defendant appears in pro per does not alter any of these principles,
as pro per litigants must comply with the same procedural rules that apply to represented
parties. (*People v. \$17,552.08 United States Currency* (2006) 142 Cal.App.4th 1076,
1084.)

I. Imposition of Terminating Sanctions

A trial court’s decision to impose sanctions for discovery abuse is reviewed for
abuse of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991.)
The “question before this court is not whether the trial court should have imposed a lesser
sanction; rather, the question is whether the trial court abused its discretion by imposing

the sanction it chose.” (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 36–37.)

Defendant first claims the default should be reversed “so that [she] can have her day in court.” We observe that defendant *did* have her day in court, with two attorneys having represented her (or having purported to represent her) at various times during the pendency of this litigation. The trial court was more than understanding of her circumstances, vacating an existing trial date based on her assurance that the second attorney would be representing her. Yet at crucial points in the process (both after mediation and just before trial) her attorneys disappeared, and thereafter defendant refused to cooperate with opposing counsel in meeting important deadlines necessary to achieve a resolution of the underlying dispute. The above chronology amply demonstrates her manipulative litigation strategy, which has done a disservice to the plaintiffs as well as to the trial court. We see no abuse of discretion in the court’s decision to impose terminating sanctions.

Moreover, her appellate brief fails to provide any basis to overturn the default or the default judgment. She claims the choice of terminating sanctions in this case was “particularly harsh” because it was based on her failure to adequately respond to written discovery requests and her failure to appear for her deposition. She asserts defendants could have moved to compel her to file new or more complete responses and that defendant’s counsel preferred to try to default her rather than to schedule a deposition. She also contends defendants failed to make any showing as to why it was necessary to take her deposition at all. She concludes, remarkably: “There was no showing that plaintiffs could not proceed with their case *without* the discovery, including a deposition, they claimed was so vital.”

Defendant fails to note plaintiffs did file a motion to compel her discovery responses at one point, and that she incurred sanctions for her failure to comply with multiple discovery requests. She fails to make any argument as to why plaintiffs should be required to continuously file such motions. Her briefing also fails to reflect the fundamental principle that all orders and judgments of the trial court are presumed

correct. Thus, plaintiffs do not have the burden on appeal to demonstrate why discovery was necessary to prove their case at trial. Defendant also fails to note she had filed a cross-complaint against plaintiffs and that, without any discovery, they would have been placed at an unfair disadvantage in defending against her claims.

II. Application of the View Ordinance

Defendant urges that we should reverse the remedy imposed by the trial court because it is “inconsistent with the Oakland view ordinance.” This argument is completely unsupported by any citations to the record. As we have noted above, “When an appellant’s brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 406–407.) Accordingly, we deem this argument to be forfeited.

III. Attorney Fee Award

Finally, defendant complains that the trial court awarded excessive fees to the plaintiffs.³ The entire argument is stated in a single sentence: “The court also gave plaintiffs approximately \$132,000 in fees and costs, an amount that will mean that [defendant] will lose her home.” Again, this is exactly the kind of argument that we, as a court of review, simply cannot address.⁴

DISPOSITION

The judgment is affirmed.

³ Section 15.52.070 of the View Ordinance calls for each party to pay his or her own costs and attorney fees, unless the dispute goes to trial or judicial arbitration, in which case the prevailing party is entitled to reasonable attorney’s fees and costs of suit.

⁴ Doubtless, a large portion of the fees in question were incurred as a result of defendant’s recalcitrant litigation strategy.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.