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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

AMY LEE ANDERSON,

Plaintiff and Appellant,

v.

INTER-CON SECURITY SYSTEMS, INC.,

Defendant and Respondent.

A132340

(Contra Costa County
Super. Ct. No. MSC1003199)

Plaintiff Amy Lee Anderson appeals from a judgment dismissing her action against her former employer, defendant Inter-Con Security Systems. She contends the trial court erred in sustaining defendant's demurrer to her complaint without leave to amend and in denying her motion for reconsideration. We dismiss the appeal.

Factual and Procedural History

In November 2010, plaintiff filed a complaint alleging, among other things, that defendant was participating in a government conspiracy to hack into and control the human brain. Defendant demurred to the complaint, which was comprised of a form complaint for personal injury and approximately 280 pages of attachments, on the ground that the complaint failed to state a cause of action and was ambiguous, unintelligible and uncertain. In response, plaintiff submitted a one page letter and an additional 242 pages of attachments attempting to explain in greater detail her claims against defendant. On April 18, 2011, the court entered an order sustaining the demurrer without leave to amend. The court found that "plaintiff's complaint fails to allege facts stating any recognized cause of action and plaintiff has not indicated how this pleading defect might

be cured.” Having sustained the demurrer without leave to amend, the court ordered that the “case is hereby dismissed.”

On May 2, 2011, plaintiff filed a motion for reconsideration which included, among other things, a proposed first-amended complaint that purported to allege causes of action for strict liability, negligence, retaliation, constructive discharge, intentional infliction of emotional distress, product liability, personal injury and fraud. She argued, among other things, that she did not present the new facts and legal theories contained in her proposed amended complaint in her opposition to the demurrer because “due to her lack of legal experience, acting in propria persona, [she] believed in [] good faith her [original complaint] was sufficient to withstand the attack from demurrer.” On June 10, the court denied plaintiff’s motion on the ground that she had presented no new facts or law as required by Code of Civil Procedure section 1008. Plaintiff filed a notice of appeal, purporting to appeal from the June 10 order.

Discussion

Defendant contends that plaintiff’s appeal must be dismissed as taken from a nonappealable order or, alternatively, the appeal should be dismissed because plaintiff failed to provide an intelligible description of her claims and cognizable legal arguments as required by the California Rules of Court.

As defendant notes, an order denying a motion for reconsideration under Code of Civil Procedure section 1008 is not separately appealable. (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1576.) Rather, 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.” (Code Civ. Proc., § 1008, subd. (g).) The California Supreme Court, however, has instructed that a notice of appeal “ “shall be liberally construed in favor of its sufficiency.” ’ ’ (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20.) Therefore, where it is “reasonably clear that the appellant intended to appeal from the judgment and the

respondent would not be misled or prejudiced,” the notice of appeal may be interpreted to apply to an existing judgment. (*Id.* at p. 22.) In this case, although plaintiff’s notice of appeal references the June 10 denial of her motion for reconsideration, her civil case information statement indicates that her appeal is from a “judgment of dismissal after an order sustaining a demurrer.” Because plaintiff’s notice of appeal, filed on June 17, would have been timely as to the April 18 order dismissing the action and no prejudice will result to defendant, we construe plaintiff’s notice of appeal as applying to the order of dismissal rather than the denial of her motion for reconsideration.

Our liberal construction of the notice, however, does not ease plaintiff’s burden on appeal. An “ ‘order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.’ ” (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718.) As the appellant, plaintiff is held to the burden of affirmatively showing prejudicial error (*City and County of San Francisco v. Funches* (1999) 75 Cal.App.4th 243, 244-245) by an adequate record (*In re Kathy P.* (1979) 25 Cal.3d 91, 102). Without such a showing, we cannot consider an issue further (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575) and must resolve it against her (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502). The presumption also casts the burden on her to present argument and authority on each point; otherwise, the point is deemed abandoned. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) The appellate court is not required to discuss or consider points that are not adequately presented. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) “Pro. per. litigants are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

Plaintiff’s appellate briefs fail completely to comply with the California Rules of Court and the above authority.¹ In December 2011, this court returned plaintiff’s original

¹ All further statutory references are to the California Rules of Court.

opening brief and provided her with an opportunity to correct the many deficiencies in her brief. Plaintiff was advised that “[a]mong other things, the brief (1) fails to cite to the record on appeal (rule 8.204(a)(1)(C)), (2) does not provide a summary of significant facts limited to matters in the record (rule 8.204(a)(2)(C)), and fails to include pertinent, cognizable legal argument (see *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119).” Plaintiff has wholly failed to correct the deficiencies we identified in her first brief.

The amended brief does not state the nature of the action. (Rule 8.204(a)(2)(A).) The lengthy statement of facts is disorganized and not supported by appropriate page cite references to the record. (Rule 8.204(a)(2)(C).) The points and authorities are unintelligible and incomprehensible and fail to state each point under separate heading with supporting argument. (Rule 8.204(a)(1)(B).) The deficiencies in plaintiff's opening brief substantially prejudiced defendant's ability to respond. Accordingly, as a result of plaintiff's noncompliance with both the California Rules of Court and our prior order, we dismiss the appeal.² (See *Berger v. Godden, supra*, 163 Cal.App.3d at pp. 1117-1119 [court has discretion to dismiss appeal for failure to file subsequent brief substantially in compliance with rules after order striking one nonconforming brief with leave to file new brief].)

Disposition

The appeal is dismissed.

Pollak, J.

We concur:

McGuinness, P. J. Jenkins, J.

² On June 11, 2012, after appellate briefing was complete, plaintiff submitted a letter brief calling the court's attention to additional cases and evidentiary materials. Attached were a number of documents and DVDs. Despite plaintiff's failure to comply with applicable court rules, we permitted these items to be filed in order to preserve her record. However, neither the letter brief nor the attached exhibits correct the severe deficiencies addressed above.