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

JACK DANIELS,

Plaintiff and Appellant,

v.

OAKLAND HOUSING AUTHORITY et al.,

Defendants and Respondents.

A132796

(Alameda County
Super. Ct. No. RG09461122)

Plaintiff Jack Daniels filed this lawsuit against defendants Oakland Housing Authority and Lorene Graves seeking monetary damages, and declaratory and injunctive relief, for discrimination in the rental of housing. He appeals (1) a judgment of dismissal entered after the trial court granted defendants' unopposed motion for summary judgment, and (2) an order denying his motion to vacate the judgment.¹ We affirm.

¹ In his August 2, 2011 notice of appeal, Daniels indicates he is appealing from "a default judgment" and "judgment after an order granting a summary judgment motion," which were entered on July 12, 2011. However, the record shows only that a judgment after an order granting a summary judgment motion was entered on March 15, 2011, and an order denying a motion to vacate to the judgment was entered on July 12, 2011. Daniels' time to appeal from the March 15, 2011 judgment was extended as a consequence of his timely motion to vacate the judgment. (Cal. Rules of Court, rule 8.108(c).) In the absence of any prejudice, we deem Daniels' timely notice of appeal to encompass both the March 15, 2011 judgment, and the July 12, 2011 order denying his motion to vacate the judgment. (Cal. Rules of Court, rule 8.100(a)(2) ["[t]he notice of appeal must be liberally construed".])

FACTUAL AND PROCEDURAL BACKGROUND

In his third amended complaint, the operative pleading, Daniels, representing himself, sought both monetary damages, and declaratory and injunctive relief, based on allegations that defendants Oakland Housing Authority (OHA) and former OHA housing assistance representative Lorene Graves, violated “California Unruh Civil Rights Act” (first cause of action), “California Fair Employment and Housing Act” based on “race,” “source of income,” “disability,” and “age” (second and third causes of action), “California Civil Code [section] 54.1-Disability” (fourth cause of action), “California Unfair Business Practices Act” (fifth cause of action), and “Negligence” (sixth cause of action). All of the causes of action were based on the following allegations. Before the death of Daniels’ wife Rebecca Webb, she had been granted a housing choice voucher (a section 8 voucher) to assist her in paying her rent. On December 18, 2006, Webb’s request for “a live-in aide” was granted as a reasonable accommodation. Webb was told that to begin the process of adding the live-in aide, she should contact Graves by telephone, and be prepared to provide current information regarding her household and any documentation regarding her live-in aide. Thereafter, Daniels and Webb, who were “black,” contacted Graves, who was “white.” During a “three-way telephone[e]” conversation, Graves was advised of the marriage of Daniels and Webb, that Webb wanted Daniels to be her in-home care provider, and that Webb asked that Daniels be added to her section 8 voucher. Graves allegedly stated: “ ‘[N]o way is he going to inherit your housing voucher.’ ” Because Graves “did not respond to . . . Webb’s request to add [Daniels] to her section 8 voucher nor said anything about the reasonable accommodation,” Daniels alleged that “as a matter of law,” Graves’ response “is and was the functional equivalence of a denial,” and was discriminatory conduct against Daniels and Webb based on their marital status and disabilities.

After filing an answer and discovery, defendants moved for summary judgment or, in the alternative summary adjudication, dismissing the lawsuit in its entirety. The motion was supported by a memorandum of points and authorities, a separate statement of undisputed facts numbered one through 95, and evidence of those facts, including

portions of Daniels' deposition, Graves's responses to special interrogatories and a declaration, and a declaration from Michelle Hasan, the assistant director of OHA's leased housing department. Defendants contended, in pertinent part, that in 2003 Webb was first issued a section 8 voucher as a single-family-member household. Webb requested a live-in aide and additional bedroom as a reasonable accommodation on two occasions, before December 18, 2006, and again, on or about August 13, 2007. However, since the issuance of Webb's 2003 voucher and until her death in July 2008, neither Webb nor Daniels requested in writing that Daniels be added to Webb's voucher as a household member or approved as Webb's live-in aide.² Because no application had been received from Daniels or Webb prior to Webb's death, OHA contended that

² According to defendants, a section 8 participant's request to add a family member to a voucher "must be made in writing and approved by OHA prior to the family member moving in the unit. Family additions are at OHA's discretion. . . . [¶] When a new family member is added OHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the household's share of the rent and Section 8 subsidy. . . ." "OHA is prohibited from allowing a Section 8 participant's relative, including . . . a spouse . . . , who has not met the Section 8 eligibility requirements and as a result has not been approved as a family member to automatically inherit a Voucher upon the death of the Section 8 participant." Also, a section 8 participant "may request a reasonable accommodation from OHA in writing or verbally. . . . [¶] OHA must approve a live-in aide if needed as a reasonable accommodation. Requests for a specific live-in aide must be made in writing. Written verification is required from a reliable, knowledgeable professional of the participant's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the participant. . . . [¶] A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations (24 CFR 5.403). Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide under the Section 8 Regulations and the Policies and Procedures. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining family member upon the death of a participant" "Accordingly, when a Section 8 participant dies, the live-in aide is not entitled or eligible for any Section 8 assistance or continued occupancy of the subsidized unit [¶] For deceased single member households or a household where the remaining household member is a live-in aide, OHA is required to discontinue paying the Section 8 subsidy to the deceased participant's landlord no later than the first of the following month after the death occurred"

following Webb's death, it properly denied Daniels' request to either inherit or be added to Webb's section 8 voucher. In her response to special interrogatories, Graves stated, in pertinent part, that in or about August to September 2007, as part of the last recertification process, Webb indicated she wanted to continue to receive an accommodation for a live-in caretaker, and mentioned Daniels as a possible caretaker, but OHA had no record of ever receiving the completed form filled out by Webb's physician. Graves also received a telephone call from Webb and Daniels at about that time. During that conversation, Graves told them that if Webb wanted to add Daniels as a spouse or a live-in aide, OHA would need to conduct a criminal background check, but Webb never initiated the process by submitting a written request for Daniels to be added as her spouse or approved as her live-in aide.

On March 4, 2011, the trial court issued a tentative ruling granting defendants' unopposed motion for summary judgment: "The Motion is GRANTED. The undisputed evidence submitted by Defendants establishes that Defendants are not 'business establishments' under the Unruh Act, that Plaintiff's 'use and enjoyment' of his apartment has not been impinged . . . in violation of the Unruh Act, that Defendants did not intentionally discriminate against Plaintiff in violation of the Unruh Act, that Defendants did not discriminate against Plaintiff in violation of the Fair Housing and Employment Act, that Plaintiff['s] claims are not subject to the California Disabled Persons Act ('CPDA'), that Defendants did not violate the CPDA, and that Defendants did not breach a statutory duty to Plaintiff. (Defendants' Separate Statement of Undisputed Facts and evidence cited therein.) In failing to oppose Defendants' motion, Plaintiff has failed to meet his burden of establishing that a triable issue of fact[] exists as to his claim. (California Code of Civil Procedure Section 437(c)(p)(2)). Thus, there is no triable issue as to any material fact and Defendants are entitled to have judgment entered in their favor as a matter of law." The court informed the parties that its tentative ruling would automatically become the final order of the court on the scheduled hearing date (March 8, 2011) unless by no later than 4:00 p.m. on the court day before the hearing (March 7, 2011), a party both: (1) notified the court by telephone or email that the party

intended to appear to contest the tentative ruling; and (2) notified all opposing counsel by telephone or in person that the party intended to appear to contest the tentative ruling. After neither party notified the court that they intended to appear to contest the tentative ruling, on March 15, 2011, the trial court filed a written order granting defendants' motion for summary judgment, and that same date entered a judgment of dismissal in favor of defendants.

On April 28, 2011, Daniels moved to set aside the judgment of dismissal on the ground that his failure to oppose the motion for summary judgment was due to "mistake, inadvertence, surprise, or excusable neglect." He claimed that on March 3, 2011, five days before the scheduled hearing date, he sent an email to the court requesting a two-week stay or continuance of the matter, but "inadvertently the court never receive[d] the e-mail." He also asserted he had contacted defense counsel one day before the scheduled hearing date. He attached to his motion his proposed opposition to defendants' summary judgment motion. Defendants opposed the motion to vacate, contending that Daniels knew the process to contest the court's tentative ruling, but failed to properly inform the court of his intention to appear and contest the ruling. It was further alleged that the court properly refused to consider Daniels' proposed opposition filed one day before the scheduled hearing date because it was untimely and not in proper form.

On July 12, 2011, the trial court denied Daniels' motion to vacate the judgment of dismissal, stating as follows: "The motion is DENIED. Even assuming this court were to grant the motion, the opposition and evidence submitted in opposition to Defendants Oakland Housing Authority and Lorene Graves ('Defendants') motion for summary judgment is insufficient to raise a triable issue of material fact. Notably, Plaintiff's response to [defendants'] separate statement does not clearly indicate which facts are 'disputed,' does not cite to evidence for all facts that are apparently disputed by Plaintiff, and improperly includes objections and argument. The only evidence submitted by Plaintiff is his declaration and an unauthenticated form, signed by his wife on September 4, 2007, neither of which raise a triable issue of material fact. [¶] Moreover, Plaintiff's submitted opposition supports judgment in this matter. Plaintiff has confirmed

that he and his wife did not complete the process of applying to have him designated as a live-in aide (so that he could be added to her Section 8 voucher) before she died. (See Plaintiff's response to Defendants' Material Fact No. 16.) Finally, the form that Plaintiff and his wife partially filled out clearly indicates that 'it must be completed by a doctor, licensed professional representing a rehabilitation center, or the supervisor or case manager representing a disability agency.' That portion to be completed by a medical professional is blank. (See Plaintiff's Evidence entitled 'Reasonable Accommodation Verification.') [¶] Given all of the above, the court declines to grant the relief sought."

DISCUSSION

We see no merit to Daniels' arguments challenging the grant of summary judgment in favor of defendants. Even though our review of a grant of summary judgment "is de novo, it is limited to issues [that] have been adequately raised and supported in [Daniels' opening appellate] brief." (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) "It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations. [Citations.] . . . As a practical matter, the appellate court is unable to adequately evaluate *which facts* the parties believe support their position when nothing more than a block page reference is offered in the briefs The problem is especially acute when, as here, the appeal is taken from a summary judgment." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.) Daniels asks us to take judicial notice of his proposed opposition to defendant's separate statement of undisputed facts, "items 4, 9, 11, 16, 19, 28, 29, 31-42, 45, 49, 51, 54-58, 67-70, 75-81, 85-86, 88-91, 93-94," citing to "record of appeal transcripts pgs. 415-441," and then argues that all those facts "are disputed material facts and all [rise] to the legal requirements of triable issues of material facts." However, a request for judicial notice cannot "be used to 'circumvent[] appellate rules and procedures, including the normal briefing process. [Citation.]' " (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064-1065, overruled in part on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) Our task as an appellate court is not to attempt to find support for the issues raised by Daniels by

independently examining the record and the law. (*Wallace v. Thompson* (1954) 129 Cal.App.2d 21, 22.) “ ‘[D]e novo review does not obligate us to cull the record for the benefit of [Daniels] in order to attempt to uncover the requisite triable issues.’ ” (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230.) We also decline to consider Daniels’ document, titled “Response Brief on Appeal,” which was filed on May 2, 2012, in which he appears to make additional arguments to demonstrate reversible error. “Fairness militates against our consideration of any arguments that [Daniels] has chosen not to raise until [his] reply brief, and the authorities holding to that effect are numerous.” (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11.)

We also see no merit to Daniels’ arguments challenging the denial of his motion to vacate the judgment of dismissal. He concedes his proposed opposition to defendants’ summary judgment motion was procedurally inadequate as found by the trial court. Although he asks us to excuse the inadequacies, we decline to do so. Although Daniels is representing himself, he is held to the same restrictive rules of procedures as an attorney. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126.) Additionally, we agree with the trial court’s finding that the evidence Daniels submitted as part of his proposed opposition to defendants’ summary judgment motion does not raise triable issues of fact requiring a trial. Daniels contends the crux of his lawsuit is defendants’ refusal to allow him and his now deceased wife the opportunity to apply to have him designated as a live-in aide or added as a family member to his wife’s section 8 voucher. However, he failed to submit any evidence demonstrating that defendants’ refusal prevented him and his wife from applying to have him designated as a live-in aide or added as a family member to Webb’s section 8 voucher. As found by the trial court, Daniels admitted in his declaration that it was “because” defendants purportedly refused to add him to Webb’s household or approve him as a live-in aide that he and his wife “file[d] another Reasonable Accommodations request . . . but unfortunately for the both of us, she pas[s]ed away before we completed the process.” Daniels also concedes that a reasonable accommodation form completed by a doctor is “the center piece” and

“imperative” to demonstrate he has a viable claim of disability discrimination against defendants. However, contrary to his contention, the record does not contain a “verified, filled out, and signed reasonable accommodation form” by Webb’s physician.

In sum, we conclude Daniels has failed to meet his appellate burden of affirmatively demonstrating any error or abuse of discretion requiring reversal of the judgment of dismissal or the order denying his motion to vacate the judgment of dismissal.

DISPOSITION

The judgment filed on March 15, 2011, and the order filed on July 12, 2011, are affirmed. Defendants are awarded costs on appeal.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.