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

JAMES WESSON,
Plaintiff and Appellant,
v.
CITY OF OAKLAND,
Defendant and Respondent.

A133479
(Alameda County
Super. Ct. No. HG10546400)

Plaintiff in propria persona James Wesson has appealed from a judgment dismissing his case against defendant City of Oakland for his failure to effect service of process. We dismiss the appeal on our own motion due to Wesson’s failures to comply with the Rules of Court and articulate any basis for reversal.

I.

Plaintiff filed his complaint on November 15, 2010. The court set a case management conference (CMC) for April 4, 2011, and ordered plaintiff to “[s]erve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint.” (See California Rules of Court, rule 3.110(b).) At the April 4 CMC, when the court learned plaintiff had not yet served his complaint, it ordered plaintiff to file a proof of service, and set a further CMC for May 5.

On April 29, plaintiff filed a proof of service of the summons and complaint, which he signed as the person who effectuated service. At the May 5 CMC, the court noted that the proof of service was invalid, and set a further CMC for June 7. (See Code Civ. Proc., § 414.10 [summons cannot be served by a party to the action]; (3 Witkin, Cal.

Procedure (5th ed. 2008) Actions, § 997, p. 1216 (Witkin) [service by a party is “strict[ly] prohibit[ed]”).) The court warned plaintiff at the May 5 CMC that he would be sanctioned if he failed to properly serve the summons and complaint before the next hearing.

Proofs of service by mail were filed on June 8, without any acknowledgement of receipt by defendant. (3 Witkin, *supra*, Actions, § 1015, p. 1235 [service by mail “is effective only if receipt of the mailed summons is acknowledged by or on behalf of the defendant”]; see Code Civ. Proc., § 415.30, subd. (c).) The minutes of the June 7 CMC state: “Defendant (*sic*) submits a proof of service but it is still not properly filled out and wrong parties have been served.” The court sanctioned plaintiff \$150 and warned that further sanctions would be imposed if he failed to properly serve the summons and complaint before the next CMC scheduled for July 21.

Plaintiff did not appear at the July 21 CMC. The court sanctioned him \$300, and set a further CMC for August 30. When plaintiff did not appear at the August 30 CMC, the court ordered the case dismissed without prejudice for plaintiff’s failure to effect service of process.

Plaintiff timely appealed from the judgment of dismissal, and has filed an opening brief on appeal.

Defendant has specially appeared and moved to be dismissed as a party to this appeal. Defendant argues that neither the trial court nor this court has obtained personal jurisdiction over it because it was never properly served, and it has not appeared in the action except to make this motion to dismiss. Plaintiff has filed a “Finail (*sic*) Brief,” which we construe to be his opposition to defendant’s motion.

II.

Plaintiff’s opening brief fails to comply with the Rules of Court requiring citations to the record (Cal. Rules of Court, rule 8.204(a)(1)(C)), an explanation of appealability (Cal. Rules of Court, rule 8.204(a)(2)(B)), and a summary of the significant facts limited to matters in the record (Cal. Rules of Court, rule 8.204(a)(2)(C)). More fundamentally, it sets forth no cogent legal argument for reversal of the judgment. “[F]ailure of an

appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) We deem the appeal to have been abandoned and conclude that dismissal is justified in this instance. (*Ibid.*; see also *In re Sade C.* (1996) 13 Cal.4th 952, 994 [dismissal for deficient argument may be ordered on court’s own motion]; *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 871 [right to oral argument on appeal applies where case is decided on the merits]; and *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [pro per litigants are entitled to the same, but no greater, consideration than those represented by counsel]).

III.

The appeal is dismissed. Defendant’s motion to be dismissed as a party to the appeal is denied as moot.

Siggins, J.

We concur:

McGuiness, P.J.

Pollak, J.