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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

EDWARD R. DAYTON,
Plaintiff and Appellant,

v.

DAVID JAMES et al.,
Defendants and Respondents.

A134481

(Solano County
Super. Ct. No. FCS 033380)

Edward R. Dayton sued the City of Fairfield and several of its employees and other agents for, inter alia, conversion, trespass, and violations of his civil rights after they removed structures and debris from his property pursuant to an abatement warrant. The trial court sustained the defendants’ demurrer to most of Dayton’s causes of action and granted summary judgment to defendants on the remaining two causes of action. We affirm.

I. BACKGROUND

In March 2008, the superior court issued an inspection warrant authorizing the City of Fairfield (City), David James and their agents to enter Dayton’s property (Property) to “inspect the exterior of the Property, including the yards and all areas surrounding the Property in order to determine the extent to which violations and hazards exist[ed] upon the Property” and “to estimate the costs of abating the violations and hazards.” They were authorized to take photographs and videorecordings, and to pass through the interior of the Property if necessary to access the rear and side yards.

On April 18, 2008, the superior court issued an abatement warrant authorizing the same parties to enter the Property to abate public nuisances. They were specifically authorized to remove certain illegal structures on the Property, repair or remove fencing, reduce the height of fencing, install a weather-tight seal on an air conditioner, and remove overgrown vegetation, lumber, stagnant water and debris. They were authorized to remove debris from “the Quonset Hut structures on the Property to the extent necessary and only if evidence of rodent harborage, such as rodent droppings, [were] found” there, and to pass through the interior of the Property if necessary to access its yards or to safely remove the illegal structures.

In the operative second amended complaint, Dayton alleged the City and City employees or agents (collectively Defendants) committed 14 intentional torts when they executed the abatement warrant. The trial court granted Defendants’ demurrer to 12 of those causes of action without leave to amend, and to two causes of action—the second cause of action for conversion and the sixth cause of action for false arrest—with leave to amend. Dayton ultimately filed a fourth amended complaint that realleged his second cause of action for conversion and sixth cause of action for false arrest. In fact, Dayton realleged all 14 causes of action in the fourth amended complaint, but the court granted Defendants’ motion to strike the 12 causes of action as to which the demurrer had already been sustained without leave to amend. Defendants moved for summary judgment on the remaining causes of action, which the court granted. Dayton’s motion for a new trial was denied.

II. DISCUSSION

A. *Forfeiture Due to Noncompliant Briefing*

Dayton’s appellate briefs fail to comply with numerous rules of court and appellate procedure. He often fails to support his factual assertions with citations to the appellate record. (See Cal. Rules of Court, rule 8.204(a)(1)(C).) He typically fails to support his legal arguments with cogent analysis that applies legal authority to the facts of his case. (See Cal. Rules of Court, rule 8.204(a)(1)(B); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116 [claim on appeal may be denied if unsupported

by argument applying legal principles to particular facts of the case].) He improperly attempts to incorporate by reference legal arguments he made in the trial court. (See *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18.) Dayton also makes new arguments for the first time in his reply brief. (See *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 [refusing to entertain an argument raised for the first time in a reply brief].) A self-represented litigant is subject to the same rules as any other party and “ ‘is entitled to the same, but no greater consideration than other litigants and attorneys.’ ” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247; see also *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523 [self-represented litigants are not entitled to special treatment and are required to follow the rules].) Dayton has therefore forfeited most of his arguments on appeal. (See *Guthrey v. State of California*, at pp. 1115–1116; *REO Broadcasting Consultants v. Martin*, at p. 500.)

We will nevertheless briefly address the merits of the appeal.

B. *Demurrer to Second Amended Complaint*

“The function of a demurrer is to test the sufficiency of the complaint by raising questions of law. [Citation.] Demurrers are treated as admitting the truthfulness of all properly pleaded factual allegations of the complaint, but not of its contentions, deductions or conclusions of law. [Citations.] In ruling on a demurrer, the court is entitled to consider matters which may be judicially noticed. [Citation.] [¶] A general demurrer should not be sustained without leave to amend if the complaint, liberally construed, states a cause of action on any theory. [Citation.] On appeal, however, all intendments are in favor of the regularity of the proceedings and the judgment below. Unless clear error or abuse of discretion is demonstrated, the judgment will be affirmed. [Citation.]” (*Lopez v. City of Oxnard* (1989) 207 Cal.App.3d 1, 6–7.) Tort claims against public entities must be pleaded with particularity. (*Id.* at p. 9.)

1. *Removal of Items from Dayton’s Property*

In his first, fourth and fifth causes of action, Dayton alleged that Defendants, “while acting under Abatement Warrant M-1217,” unlawfully removed personal property from the exterior areas of his Property and unlawfully removed his backyard deck and

property thereon. He alleged the removals violated the City's municipal code, and were actionable as conversion. Defendants were immune from state law liability for these alleged acts under Government Code section 820.4,¹ which immunizes public employees for any "act or omission, exercising due care, in the execution or enforcement of any law." (§ 820.4; see *Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 462 (*Ogborn*)). Dayton did not allege a lack of due care, and the trial court correctly dismissed these claims.

In his third cause of action, Dayton alleged Defendants trespassed when they unlawfully removed property from the front porch and roof of Dayton's house "while acting under Abatement Warrant M-1217." (Dayton's second cause of action for *conversion* based on this same conduct was the subject of the summary judgment motion, which we discuss *post*.) The trial court correctly ruled that Defendants were immune from state law liability for these alleged acts under section 821.8, which immunizes public officials from trespass liability if they enter property under authority of law except for "an injury proximately caused by his own negligent or wrongful act or omission." (See § 821.8; *Ogborn, supra*, 101 Cal.App.4th at pp. 462, 464.) Dayton does not allege any injury resulted from the negligence or wrongful conduct in committing the alleged trespass.

Citing section 821.6, Dayton argues on appeal that the trial court erred in dismissing these claims. Section 821.6 immunizes public employees from liability for instituting judicial or administrative proceedings, but does not immunize public employees for *carrying out* decisions made in those proceedings. (*Ogborn, supra*, 101 Cal.App.4th at pp. 462–463.) While Defendants may not have had section 821.6 immunity for the acts alleged in the first, third, fourth and fifth causes of action, they enjoyed immunity under sections 820.4 and 821.8 for those acts for the reasons stated *ante*.

¹ All further undesignated statutory references are to the Government Code.

2. *Preremoval Abatement Conduct*

In his seventh cause of action, Dayton alleged that James, “over a three year period from January 06 thru March 08[,] photographed [Dayton’s] backyard while standing on adjacent properties to [the Property] by passing his camera over and across [Dayton’s] fences without [Dayton’s] permission and in direct opposition to [Dayton’s] command not to do so.” Dayton alleged the conduct violated his right to privacy. Defendants were immune from liability for these acts under section 820.4, which immunizes law enforcement acts carried out with due care. (*Ogborn, supra*, 101 Cal.App.4th at pp. 462.) Dayton does not allege the surveillance was unrelated to law enforcement purposes or was carried out without due care, and the trial court correctly dismissed this claim.

In his eighth cause of action, Dayton alleged that James made false statements to the superior court in applications for inspection and abatement warrants he filed in 2006 and in 2008. In his ninth cause of action, Dayton alleged three Defendants “pursued unwarranted, erroneous, and malicious prosecution against [the Property] during course of entire abatement case in order to harass [him],” knowing some of their actions were not supported by law. The trial court correctly ruled that Defendants were immune under section 821.6, which provides absolute immunity for public employees’ instituting or prosecuting judicial or administrative proceedings within the scope of their employment. (*Ogborn, supra*, 101 Cal.App.4th at pp. 462–463.)

3. *Recovery of Abatement Costs*

In his 10th cause of action, Dayton alleged that three Defendants unlawfully recorded a lien seeking recovery of the full cost of removal and repair of fences, even though the fences were on a property line and thus were the joint responsibility the adjacent property owners. Dayton alleged this conduct violated his federal and state constitutional rights. Defendants were immune from state law liability under section 821.6, which provides absolute immunity for public employees’ instituting or prosecuting judicial or administrative proceedings within the scope of their employment, and section 820.4, which immunizes law enforcement acts carried out with due care.

(*Ogborn, supra*, 101 Cal.App.4th at pp. 462–464.) The trial court correctly dismissed these claims.

In his 11th cause of action, Dayton alleged that two Defendants unlawfully submitted an invalid and partially erroneous claim against Dayton’s bankruptcy estate. The trial court properly dismissed this claim for lack of jurisdiction. State court “malicious prosecution and abuse of process claims premised on a prior bankruptcy proceeding are preempted by federal bankruptcy law.” (*Ross v. Universal Studios Credit Union* (2002) 95 Cal.App.4th 537, 541.) On appeal, Dayton argues Defendants failed to follow mandatory state law procedures before they sought recovery of their abatement costs in the bankruptcy filing. Again, this argument had to be presented in the bankruptcy court, which had exclusive jurisdiction over the claim.

4. *Ratification by City Officials*

In his 12th cause of action, Dayton alleged that the City Council, the mayor, and members of the City Council unlawfully “upheld” James’s malicious prosecution of Dayton through the abatement proceedings. He specifically alleged that a City Council hearing on the matter was unfair because James was given twice as much time to speak as Dayton. The trial court correctly dismissed this claim. Defendant city officials were immune from state law liability under section 820.2 for their discretionary acts of approving the abatement of Dayton’s property. (*Ogborn, supra*, 101 Cal.App.4th at p. 460.) Further, Dayton failed to allege a cognizable violation of his due process rights. (See *Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 717 [official duty of a city in case seeking to abate nuisance “is to afford the property owner a due process hearing which consists of an opportunity to be heard . . . and a determination upon competent sworn testimony”]; but see *E.W.A.P., Inc. v. City of Los Angeles* (1997) 56 Cal.App.4th 310, 324 [rejecting sworn testimony requirement].)

5. *Title 42 United States Code Section 1983 Liability*

As to all of the foregoing causes of action, Dayton alleged his claims were also actionable under the federal civil rights law, section 1983 of title 42 of the United States

Code.² As to all of the claims, however, the individual Defendants were entitled to qualified immunity under the federal statute because Dayton cited no clearly established law that their conduct was unlawful (*Ogborn, supra*, 101 Cal.App.4th at pp. 457–459), and the City had no liability because Dayton alleged no municipal policy that caused a deprivation of his federal rights (*id.* at pp. 463–464).

6. *Conspiracy Claims*

In his 13th and 14th causes of action, Dayton alleged Defendants conspired with each other to deprive him of his property in violation of title 42 United States Code section 1985. The trial court correctly dismissed these claims because Dayton failed to allege “that ‘some racial, or perhaps other class-based, invidiously discriminatory animus [lay] behind the conspirators’ action’ [citation]” (*Bray v. Alexandria Women’s Health Clinic* (1993) 506 U.S. 263, 268), an essential element of a conspiracy claim under the federal statute. (*Id.* at pp. 267–268.) Dayton virtually concedes on appeal that dismissal was appropriate.

C. *Motion for Summary Judgment*

“The standard of review on appeal after an order granting summary judgment is well settled. ‘A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.’ [Citation.] We review the trial court’s decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has “shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,” the burden shifts to the plaintiff to show the existence of a triable issue; to meet that

² As to all of his causes of action, Dayton also alleged they were actionable under the federal and state Constitutions. However, he makes no separate argument on appeal regarding such constitutional claims except as noted *ante*. All other constitutional challenges to the dismissal of such claims are forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

burden, the plaintiff “may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action” [Citations.]’ [Citation.] [¶] In reviewing the evidence, we strictly construe the moving party’s evidence and liberally construe the opposing party’s and accept as undisputed only those portions of the moving party’s evidence that are uncontradicted. ‘Only when the inferences are indisputable may the court decide the issues as a matter of law. If the evidence is in conflict, the factual issues must be resolved by trial. “Any doubts about the propriety of summary judgment . . . are generally resolved against granting the motion, because that allows the future development of the case and avoids errors.” [Citation.]’ [Citations.]” (*Ogborn, supra*, 101 Cal.App.4th at pp. 456–457, italics omitted; Code Civ. Proc., § 437c.)

The following undisputed evidence was submitted in support of Defendants’ summary judgment motion. The abatement warrant, which was facially valid, authorized Defendants to remove, inter alia, scrap lumber, household items including carpets and bed frames, household hardware including ducting and shelving, and “assorted miscellaneous trash and other material” from designated areas. Those areas were in the open yard, underneath the lean-to structure, and inside the illegal structures and the Quonset huts. When the abatement team arrived at Dayton’s home, Dayton was “working with items on his roof including scrap lumber and shade cloth.” The police told him to “stop,” whereupon Dayton went into the back yard and began throwing lumber onto his roof. He said he was doing this to get them “out of the way of me and the abatement.” The police again told Dayton to stop, and he walked away from the officers and toward the house. Officers then arrested him for interference with the execution of a court order.

1. *Conversion Claim*

In the conversion cause of action, Dayton alleged that the City and five individual Defendants directed contractors to unlawfully remove Dayton’s personal property from the front porch and roof of his house. He alleged this removal was not authorized by the abatement warrant. The removed property included a “weight bench, weights, card table,

personal papers and other effects,” as well as “a wooden overhang, lumber, and shadecloth.”

This cause of action would have been dismissed on demurrer but for the allegation that items were removed from an area not specifically covered by the abatement warrant, i.e., the front porch and roof of Dayton’s house. Dayton, however, acknowledged that the items taken from the roof and porch were generally the type of items identified in the abatement warrant, and the evidence showed he had moved at least some of the items to the roof from areas that were covered by the warrant. “Although ‘[t]he Fourth Amendment requires search warrants to state with reasonable particularity what items are being targeted for search,’ in order to prevent police from rummaging through someone’s belongings, a search warrant ‘ “need only be reasonably specific, rather than elaborately detailed, and the specificity required varies depending on the circumstances of the case and the type of items involved.” [Citation.]’ [Citation.]” (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 460; see also *Ogborn, supra*, 101 Cal.App.4th at p. 459 [principles governing liability for execution of criminal search warrants applicable to execution of abatement warrants].) On the undisputed facts of this case, Defendants could not be found liable for executing the warrant without due care based on their removal of items from the roof that were consistent with items described in the warrant and that appeared to have been moved from areas covered by the warrant. (See *Ogborn*, at p. 462 [discussing § 820.4].) They also could not be found liable under title 42 United States Code section 1983. (*Id.* at pp. 457–458.) Dayton does not raise any argument in his opening brief particular to the items that were removed from the porch.

Dayton further argued in opposition to summary judgment that items cannot be declared a nuisance and abated unless they are visible to the public. He relied on the City’s municipal code, but the cited ordinance does not support his position. (See *Fairfield Mun. Code*, § 27.401.)

The court properly granted summary judgment to Defendants on the second cause of action.

2. *False Arrest Claim*

In the false arrest cause of action, Dayton alleged that two Defendants unlawfully arrested him during execution of the abatement warrant. He alleged two officers tackled him “inside the back door of his house, then handcuffed and removed” him and transported him to jail. He further alleged the officers did not have an arrest warrant and “[t]his action was taken . . . after [Dayton] was ordered by the officers to ‘stop’ while [he] was conducting lawful activities in his backyard.” Dayton was charged with disobeying a court order, spent two days in jail, and was released on a \$3,000 bond.

The abatement warrant instructed Defendants that if Dayton was present he was not permitted to interfere with their entry or abatement activities. On the undisputed facts of the case, the officers reasonably believed they had probable cause to arrest Dayton for interfering with execution of the abatement warrant. (See *In re J.G.* (2010) 188 Cal.App.4th 1501, 1505–1506 [describing probable cause for warrantless arrest].) They thus were immune under section 820.4 and title 42 United States Code section 1983. (*Ogborn, supra*, 101 Cal.App.4th at pp. 457–458, 462.)

III. DISPOSITION

The judgment is affirmed. Dayton shall bear the respondents’ costs on appeal.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.