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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SALMA KHAN, M.D.,

Plaintiff and Appellant,

A145791

v.

**(San Francisco County
Super. Ct. No. CGC10503403)**

COUNTY OF SAN MATEO et al.,

Defendants and Respondents.

Salma Khan, M.D., filed a complaint against her former employer, County of San Mateo (County), alleging she was wrongfully terminated. Khan repeatedly failed to provide adequate responses to the County's discovery requests and — after granting three motions to compel — the trial court granted the County's motion for monetary and terminating sanctions and dismissed the operative complaint. (Code Civ. Proc., §§ 2030.010, 2030.290.) Khan appeals in propria persona.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Until 2009, Khan was a psychiatrist at a County mental health clinic. In 2010, Khan filed a complaint against the County and another defendant; the operative first amended complaint alleged, among other things, wrongful termination. The County propounded written discovery; Khan's responses were inadequate.

The County moved to compel Khan to provide supplemental responses to its interrogatories and requests for production of documents, and to appear for an additional deposition. In May 2013, the court partially granted the motion, ordering Khan to provide supplemental responses and to appear for an additional deposition. The court also sanctioned Khan \$1,000. Khan's supplemental responses were incomplete and unresponsive and the County filed a second motion to compel. In late 2013, the court partially granted the motion and ordered Khan to appear for a supplemental deposition and to produce additional documents. Khan's responses remained inadequate and the court partially granted the County's third motion to compel. It ordered Khan to provide supplemental responses and sanctioned her \$1,000. Khan did not comply with the court's order.

In early 2015, the County filed a fourth motion to compel supplemental responses to its discovery requests or, in the alternative, for monetary and terminating sanctions. Khan did not file a written opposition.¹ Following a hearing, the court granted the motion, concluding the Code of Civil Procedure "requires that plaintiff make a reasonable and good faith effort to obtain the information to answer discovery. [Citation.] 'A party cannot plead ignorance to information which can be obtained from sources under [her] control.' Plaintiff must also make a 'diligent search' and a 'reasonable inquiry' in responding to a document request. [Citation.] Plaintiff has had two years to properly respond to discovery. Yet, despite numerous opportunities to respond, she has violated three separate orders. Therefore, [the County's] motion for terminating sanctions is GRANTED." The court sanctioned Khan \$1,600. The court dismissed the complaint and entered judgment for the County.

¹ The reporter's transcript of the hearing is not part of the appellate record. According to the County, Khan appeared at the hearing and opposed the motion.

DISCUSSION

Khan contends the court erred by issuing terminating sanctions because she did not willfully disobey a court order, and because the monetary sanction of \$1,600 was “sufficient.”

“A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.” [Citation.]’ [Citations.] ‘A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.’ [Citations.]” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) “Failure to provide an adequate record on an issue requires that the issue be resolved against plaintiff.” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

In the trial court, Khan did not file a written opposition to the motion for sanctions. On appeal, she did not provide a transcript of the hearing on the motion. Without the reporter’s transcript, Khan cannot demonstrate the court erred by granting the County’s motion for terminating sanctions. (*Liberty Mutual Fire Ins. Co v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1101-1102 [order granting terminating sanctions reviewed for abuse of discretion].) As a result, we must affirm the court’s ruling. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768 [“A violation of the rules of court may result in . . . the waiver of the arguments made therein, the imposition of fines and/or the dismissal of the appeal”]; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 129 [defendants who did not provide reporter’s transcript could not demonstrate insufficient evidence supported trial court’s finding].)

In its brief, the County contends it is entitled to “reasonable attorney’s fees” because Khan’s appeal is frivolous. We deny the request because the County “has not filed a separate sanctions motion as required by California Rules of Court, rule

8.276(b)(1). Sanctions cannot be sought in the respondent's brief. [Citation.]” (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919.)

DISPOSITION

The judgment is affirmed. The County is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.

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