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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

DIANE COLBY,

Plaintiff and Appellant,

v.

SIGNATURE PROPERTIES, INC., et al.,

Defendants and Respondents.

C066375

(Super. Ct. No.
34-2008-00025461-CU-
WT-GDS)

Plaintiff Diane Colby sued defendant Signature Properties, Inc. (Signature), alleging causes of action arising from her employment and termination with Signature. After the trial court disposed of some of Colby's causes of action, a jury returned a defense verdict on the remaining causes of action. Colby appeals, representing herself. We conclude that Colby has failed to establish prejudicial error; therefore, we affirm.¹

¹ Colby's motion for new evidence and to augment the record on appeal, filed June 15, 2012, is denied.

BACKGROUND

We recount only the facts and procedure necessary to give context to Colby's assertions of error. The facts relevant to this appeal involve claims by Colby that Signature retaliated against her for (1) her role in the investigation of another employee's discrimination lawsuit against Signature and (2) her refusal to violate legal duties relating to real estate transactions. We therefore focus on the facts relating to those allegations. Additional facts and procedure are recounted in the discussion.

Colby worked for Signature as a new home sales representative in the Sacramento area from July 2003 to May 2008. She was an at-will employee. At the time, John Bayless was Signature's Sacramento division president. Until 2007, Alisa Boris was the Sacramento division sales manager, working under Bayless and directly supervising Colby. In 2007, Linda Kime replaced Boris.

During the time that Colby worked for Signature, Bayless and Boris signed real estate documents. Colby believed that they did not have legal authority to sign the documents because they did not have the requisite real estate license. Signature, on the other hand, believed that the supervisors had the proper legal authority to sign the documents as Signature's representatives. Colby told Bayless that she thought Boris was illegally signing documents, but she did not tell Bayless that she also thought he was illegally signing.

Signature included price guarantees (agreeing to lower the price if, before closing escrow, the price on comparable homes was lowered) in some of the contracts that Colby negotiated with homebuyers. In two instances, Colby believed that Signature was not complying with the price guarantee (the Reeves transaction and the Low transaction).

In the Reeves transaction, Signature lowered the price of comparable homes before closing escrow with the Reeveses. Colby brought the price guarantee to Bayless's attention and Bayless, after closing, arranged to refund the difference between what the Reeveses paid and what the new lower price was to the Reeveses. Colby objected to this manner of handling the price guarantee, stating that she believed the price should have been lowered on the property before closing.

The Lows also had a price guarantee in their contract to buy a home from Signature. Before the closing of the Low escrow, the Lows learned that Signature was in negotiations with another buyer on a similar home for a lower price. Colby believed that entitled the Lows to the lower price, but Bayless disagreed, believing that the Lows were not entitled to the lower price unless the negotiations on the other home resulted in a contract. Signature, through Kime, eventually negotiated a lower price with the Lows before they closed escrow.

In November 2006, Signature transferred Colby to another subdivision. When Colby complained about the transfer, Signature transferred her back to where she had been. Colby believed the transfer was in retaliation for insisting that the

Reeveses receive a lower price as a result of the price guarantee.

In 2007, Colby told Boris that she (Colby) was interested in being nominated for an industry award. Boris did not nominate Colby for the industry award, but Boris recognized Colby later that year as the top sales agent in Signature's Sacramento division.

Another Signature employee, Karen Williams, sued Signature, alleging age discrimination. Signature retained Shaw Valenza LLP to represent it, and Carolyn Burnette of that firm investigated the case. In the course of that investigation, Burnette interviewed Colby, who had trained Williams. Colby claimed later that Boris and Bayless told her that she should fail to remember certain facts or lie during the interview, but Bayless denied making such statements.

Colby brought her own attorney, Michael Zinicola, to the interview. However, Burnette did not allow Zinicola to be present while she conducted the interview.

In the interview, Colby shared her beliefs concerning the legality of an unlicensed Signature employee signing real estate documents. Burnette did not solicit this information about signing documents and did not believe it was relevant to the Williams lawsuit.

Zinicola testified that, after Colby's interview, Burnette called him to discuss a "golden parachute" for Colby, saying that Colby might not be able to remain employed by Signature. Burnette testified that she spoke to Zinicola after the

interview, but she did not discuss ending Colby's employment with Signature. She believed Colby's testimony in the Williams lawsuit would be favorable to Signature.

Soon after Colby's interview with Burnette, Kime approached Colby about a complaint Signature had received relating to Colby. Leslie Cheek, a real estate agent, had called Kime to tell her that one of Cheek's clients had refused to work with Colby because of Colby's appearance, that Colby was "a mess" -- her nails were too long, her hair was messed up, and her clothes were too tight. After speaking with her supervisors, Kime met with Colby and told her about the complaint. Colby wanted to know who made the complaint, but Kime, apprehensive that Colby would harass Cheek about it, would not tell her. Colby met with Bayless and told him that she thought Kime was motivated by the fact that Colby had brought her own attorney to the interview with Burnette.

In 2008, Kime failed to submit timely paperwork to renew Colby's real estate license. However, Kime sent in the paperwork within one day after Colby notified her that it had not been done. The delay did not affect Colby's license. But Colby believed the delay was another act of retaliation.

With the downturn in real estate sales, Signature began laying off employees. The layoffs began in 2006 and continued through 2007 and into 2008. In May 2008, Colby was laid off. Out of 44 employees in the Sacramento division in 2006, only 11 remained after the May 2008 layoffs. Audrey Ullman took over as the real estate agent at the subdivision where Colby had worked.

Colby sued Signature, John Bayless, and Linda Kime, alleging seven causes of action resulting from her termination. The individual defendants (Bayless and Kime) moved for summary judgment, and Colby did not file an opposition. The trial court granted the motion. Signature also moved for summary judgment. The trial court granted summary adjudication as to claims of (1) harassment, (2) breach of the implied covenant of good faith and fair dealing, and (3) intentional infliction of emotional distress, as well as Colby's request for punitive damages. The court denied the motion as to claims of wrongful termination.

The action went to jury trial on the wrongful termination claims, and the jury rendered a special verdict. It determined that Colby "report[ed] and/or participate[d] in the investigation of an age discrimination lawsuit by Karen Williams" and "report[ed] conduct that she reasonably believed to be illegal, and/or refuse[d] to engage in a violation of her statutory duties of disclosure and fair and honest dealing in connection with a real estate transaction." However, the jury concluded that neither of these activities was "a motivating reason for Signature Properties' selecting Diane Colby for layoff."

The trial court entered judgment in Signature's favor on the jury verdict.

Colby filed a motion for new trial, alleging juror and attorney misconduct. She asserted that jurors (1) prejudged the case and communicated with other jurors about the case before it was submitted to them, (2) conducted independent investigations

and received evidence outside the courtroom, and (3) engaged in improper communications with defense counsel and a defense witness. In all, she alleged 15 instances of misconduct.

The trial court denied the motion for new trial. It determined that (1) accusations that jurors prejudged the case and discussed the case before it was submitted to them lacked credibility, (2) accusations that jurors conducted investigations and received evidence outside the courtroom similarly lacked credibility, and (3) communication between jurors and attorneys or witnesses was "incidental communication of pleasantries."

DISCUSSION

We acknowledge that Colby, who was represented by counsel in the trial court, is representing herself in connection with this appeal and therefore has not had the formal legal training that would be beneficial in advocating her position. The rules and requirements of civil procedure, however, apply to self-represented parties the same as they do to parties represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, a self-represented litigant "is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citation.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

Colby's opening brief on appeal fails in several respects to present reasoned argument supported by appropriate authority. In fairness to Signature, we must mention that many of the sections and paragraphs in the opening brief fail to present a

coherent, recognizable argument. The California Rules of Court require the appellant (Colby) to: (1) present each point separately in the opening brief under an appropriate heading, showing the nature of the action to be presented and the point to be made (Cal. Rules of Court, rule 8.204(a)(1)(B)); (2) provide an adequate record that affirmatively demonstrates error (Cal. Rules of Court, rule 8.120 et seq.); (3) support all appellate arguments with legal analysis and appropriate citations to the material facts in the record (Cal. Rules of Court, rule 8.204(a)(1)(C)); and (4) state the nature of the action, the relief sought, and the judgment appealed from, and show exactly how the error caused a miscarriage of justice (Cal. Rules of Court, rule 8.204(a)(2)(A); Cal. Const., art. VI, § 13). For the most part, Colby's brief fails to comply with these requirements. When an appellant fails to comply with any of these rules, the contention is forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(B); see *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240.)

Based upon the noncompliant nature of Colby's brief, it would be appropriate for us to entirely disregard her contentions because, for the most part, they have not been (1) clearly presented, (2) supported with proper citations to the record, or (3) supported with citations to applicable legal authority. In the interests of disposing of the merits of the case fairly, however, we believe it reasonable to address below the arguments we have identified in Colby's opening brief.

Ruling on Motion for Summary Judgment

Colby seeks reconsideration of the trial court's summary adjudication of her cause of action for intentional infliction of emotional distress, and the accompanying request for punitive damages. However, she fails to show error.

A defendant's motion for summary judgment is properly granted when there are no triable issues of material fact and the defendant is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The defendant must show that (1) one or more elements of the cause of action cannot be established or (2) there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) If a defendant makes this showing, the burden shifts to the plaintiff to show the existence of a triable issue of material fact. (*Ibid.*) We review the trial court's ruling on the motion for summary judgment independently. We consider all evidence presented, except for evidence properly excluded. And we also consider all reasonable, uncontradicted inferences. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

In making her argument that the trial court improperly granted summary adjudication, Colby fails to establish that the facts alleged in her complaint and presented at summary judgment support a cause of action for intentional infliction of emotional distress. Instead, she cites several facts and simply declares that Signature's conduct was outrageous, without citing any authority to support the declaration. Because she has

failed to support her contention with reasoned argument and authority, she has forfeited it. (See *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074 [contentions not supported by reasoned argument and authority are forfeited].)

In any event, the facts cited by Colby do not support a cause of action for intentional infliction of emotional distress.

To establish a cause of action for intentional infliction of emotional distress, a plaintiff must show: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) To be considered outrageous, conduct must exceed all bounds usually tolerated in civilized society. (*Ibid.*) Liability does not arise from ""mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."" (Ankeny v. Lockheed Missiles & Space Co. (1979) 88 Cal.App.3d 531, 537.)

In her argument, Colby cites the following as outrageous conduct: (1) Signature's president disregarded Colby's attempts to contact him, (2) the president ratified the allegedly illegal signing practices of Colby's supervisors, and (3) Signature's counsel avoided the attempts of Colby's attorney to discuss her

complaints. She also declares: "Signatures [sic] retaliatory conduct against Colby was convincing." None of these factual statements and arguments supports a cause of action for intentional infliction of emotional distress.

The trial court did not err by granting summary adjudication as to the cause of action for intentional infliction of emotional distress.

II

Evidentiary Rulings

Colby contends that the trial court made evidentiary rulings that excluded relevant evidence. However, it is difficult to ascertain from Colby's brief exactly what rulings she now contends were improper. To the extent her arguments were not presented clearly or with legal authority, they are forfeited. (See *Salas v. Department of Transportation, supra*, 198 Cal.App.4th at p. 1074.) In any event, the main focus of her arguments appears to be that the trial court should have allowed her more leeway in establishing that some of Signature's real estate practices were illegal. We conclude that the trial court did not abuse its discretion.

We review evidentiary rulings for abuse of discretion -- that is, for whether the rulings exceeded the bounds of reason. (*People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 639-640.) We reverse only if (1) the trial court abused its discretion and (2) the error resulted in a manifest miscarriage of justice. (*Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 919.)

Colby appears to disagree with the trial court's rulings pursuant to Evidence Code section 352 that certain evidence should be excluded because it was either insufficiently probative or would unduly consume time. Evidence Code section 352 gives the trial court discretion to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of . . . confusing the issues, or of misleading the jury."

The trial court refused to get bogged down in collateral matters concerning the legality of some of Signature's practices. For example, the trial court excluded statements by Williams, the former Signature employee who sued Signature for age discrimination, concerning whether she believed Signature's practices with respect to signing documents were legal. Colby gives no reasonable explanation for why the trial court should have allowed such testimony, other than to generally impugn Signature's integrity. (See Evid. Code, § 352.) We see no abuse of discretion in this and similar rulings, and Colby fails to provide an authoritative reason for us to conclude otherwise.

Colby sought to use Joseph Scalia, who is an attorney and real estate broker, as an expert on real estate law and to give his opinion concerning the law of real estate sales, a broker's supervisory duties, and other related matters. Signature moved to exclude all testimony from Scalia. The trial court ruled that, to the extent Scalia's testimony is relevant to the issues in the case (for example, concerning a broker's duty to supervise an agent), Scalia would be allowed to testify, but he

would not be allowed to testify about matters of real estate law not relevant to the dispute. As the court stated, this case did not involve allegations of malpractice or discipline against a license. The court further noted that its ruling was without prejudice and would consider further argument and objections as the trial progressed.

Colby argues that the trial court erred by excluding testimony from Scalia. In support, she quotes from deposition transcripts, but she does not show that she attempted to introduce the evidence, or even that it was specifically relevant, yet excluded. This argument fails to establish an abuse of discretion.

Colby's contentions concerning the trial court's evidentiary rulings are without merit.

III

Alleged Conflict

Colby contends for the first time on appeal that counsel for Signature should have been disqualified on the trial court's own motion because the firm representing Signature (Shaw Valenza LLP) had interviewed Colby earlier in connection with the age-discrimination action brought by Williams. Colby forfeited this argument by failing to make it in the trial court.

Carolyn Burnette, an attorney then employed by Shaw Valenza, represented Signature in the age-discrimination lawsuit filed by Karen Williams. During her investigation concerning the lawsuit, Burnette interviewed Colby because Williams's complaint alleged that Colby had trained her. Colby brought her

own attorney, Michael Zinicola, to the meeting, but Burnette advised Zinicola that he could not be present during the interview. Zinicola left, and Burnette interviewed Colby.

Zinicola testified that Burnette told him he was unneeded at the interview because she (Burnette) was Colby's attorney. Burnette, who practices employment law, denied making that statement or ever offering to represent a nonmanagerial employee of a client business.

During the interview, Colby told Burnette that she believed some of Signature's practices of having employees sign documents without being licensed were illegal. She also told Burnette that Williams had tried to get her to obtain company documents to help with her case, but that Colby had refused to participate.

On appeal, Colby appears to contend that the trial court erred by allowing Shaw Valenza to represent Signature because that firm had a conflict of interest. Colby forfeited this contention by failing to make it in the trial court. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 798 [contentions not raised in trial court are deemed forfeited].) Colby also forfeited this contention by failing here to support it with reasoned argument and authority. (See *Salas v. Department of Transportation, supra*, 198 Cal.App.4th at p. 1074.)

IV

Motion for New Trial

Colby contends that the trial court abused its discretion when it denied her motion for new trial based on alleged jury misconduct. However, she forfeited this contention by failing to provide authority to support it in her briefing on appeal. (See *Salas v. Department of Transportation, supra*, 198 Cal.App.4th at p. 1074.) In any event, the contention is without merit.

The trial court has broad discretion when ruling on a motion for new trial based on alleged jury misconduct. (*People v. Dykes* (2009) 46 Cal.4th 731, 809.) The court applies a three-part test. The court determines whether (1) the evidence of misconduct is admissible, (2) the evidence establishes misconduct, and (3) the misconduct is prejudicial. (*People v. Duran* (1996) 50 Cal.App.4th 103, 112-113.)

Colby argues the facts concerning jury misconduct without recognizing that the trial court found many of the allegations lacking in credibility. Rather than attempting to establish that the trial court's credibility determinations are unsustainable or that the motion for new trial should have been granted even disregarding the evidence found to lack credibility, Colby just ignores the findings and argues that the evidence required a new trial. Because her argument is based on facts rejected by the trial court, her argument fails to persuade us that the trial court abused its discretion in denying the motion for new trial.

Accordingly, we conclude that the trial court did not abuse its discretion in denying Colby's motion for new trial.

V

Scattered Assertions of Error

We have attempted to identify Colby's assertions of error; however, the nature of her briefing makes it difficult. To the extent we have missed something she believed was important, she has forfeited it by failing to raise it properly, state her contention in proper headings, and provide reasoned argument and authority. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Salas v. Department of Transportation, supra*, 198 Cal.App.4th at p. 1074.)

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.