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

STELLA ONYEUKWU,

Plaintiff and Appellant,

v.

MARJORIE HOWTON,

Defendant and Respondent.

C067431

(Super. Ct. No.
PC20100123)

Plaintiff Stella Onyeukwu brings this pro se judgment roll appeal following a bench trial of her breach of contract action against defendant Marjorie Howton, in which the court found that plaintiff -- rather than defendant -- breached the contract, and entered judgment in defendant's favor.

On appeal, plaintiff contends the trial court erroneously interpreted the parties' contract in light of "the evidence [that] clearly shows" defendant's contractual obligations and

plaintiff's "uncontradicted testimony" that defendant breached those obligations. Moreover, plaintiff argues, even if she did fail to fulfill her own contractual obligations, that did not absolve defendant from doing the same.

We find no error and shall affirm the judgment.

BACKGROUND

Plaintiff has elected to proceed on a clerk's transcript (Cal. Rules of Court, rule 8.122; further rule references are to the California Rules of Court), and without a record of the trial proceedings.

Accordingly, we summarize the facts underlying the parties' dispute chiefly from the exhibits introduced at trial which have been made part of the appellate record.

At the time of these events, defendant had long been operating a licensed residential care facility for the elderly in Placerville, called Park Avenue Guest Home.

In January 2007, defendant sold the business to plaintiff, and was no longer active in its operation.

In the months following, family members of some residents made complaints, and the Department of Social Services (DSS) notified plaintiff, the administrator of record, that she could not operate the facility without a license.

In January 2008, plaintiff submitted her own application for a license to operate the facility.

By July 2008, disputes between the parties were serious enough that they had considered litigation, and they entered into a written compromise and settlement agreement. As relevant

to this appeal, paragraph 3 of that agreement states: "Buyer [plaintiff] and seller [defendant] each reserve any and all rights, claims and defenses as against each other that may arise after the effective date of this Agreement

Notwithstanding the foregoing, buyer acknowledges, understands and agrees that seller has no continuing duty to buyer other than allowing buyer's use of seller's residential care home license for said real property for one year from the effective date of this Agreement [August 5, 2008] or until such time as buyer obtains her own license with respect to said residential care home, whichever event occurs first. . . ."

According to DSS, plaintiff's application for a license to operate the facility was "withdrawn and closed" on September 2008. Defendant was notified by DSS that plaintiff's application was being closed due to plaintiff's "inability to meet [the] required criteria", and since defendant no longer had control over the property, defendant's license was forfeited.

Plaintiff then brought this action, seeking damages for breach of the settlement agreement and fraud, and alleging that defendant "withdrew her license from plaintiff's residential care home . . . relocated the residents to other care homes" and misrepresented to plaintiff that DSS had forced defendant to do so.

In her answer, defendant denied any misrepresentations and alleged she had been directed by DSS to forfeit her license and relocate the clients to another facility, or else DSS would take legal action against her.

At trial, both parties testified, and many exhibits were admitted into evidence. Thereafter, the court found plaintiff breached the terms of the settlement agreement "as she did not pursue the necessary license to run the business" and entered judgment in defendant's favor.

DISCUSSION

I. Standard of Review

On appeal, a judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. Thus, an appellant has the burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.)

Because plaintiff has provided only a clerk's transcript of the proceedings, we treat this as an appeal "on the judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.) When an appeal is on the judgment roll, we must conclusively presume evidence was presented that is sufficient to support the court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; rule 8.163.)

II. Plaintiff Has Shown No Reversible Error

Plaintiff contends on appeal that the trial court misinterpreted the settlement agreement when it found that she, not defendant, had breached that agreement and that it did so in the face of the "plain and unambiguous provisions" of the settlement agreement and plaintiff's own "uncontradicted testimony."

Given the state of the record on appeal, we cannot entertain these arguments. It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Thus, an appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If she fails to do so, the argument is forfeited. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

The California Rules of Court provide an appellant with a choice of several types of records upon which to take an appeal. The choices include a reporter's transcript, a clerk's transcript, an agreed statement and a settled statement. (Rules 8.831, 8.832, 8.834, 8.836, 8.837.) Plaintiff elected to proceed with a clerk's transcript and provided no transcript of the trial proceedings.

Because plaintiff fails to provide any record of the trial preceding the judgment from which she appeals, we cannot assess "uncontradicted testimony" adduced at trial, and we cannot

entertain her suggestion that the evidence did not support the trial court's findings. Instead, as we explained, we "'must *conclusively presume* that the evidence is ample to sustain the [trial court's] findings" (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154, italics added.) In addition, a court may consider oral testimony by parties to a contract to interpret its terms; this is called parol evidence. (See *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165-1166.) Without a transcript of the trial, we have no way of knowing whether the trial court's interpretation of the settlement agreement at issue here rested upon parol evidence from the parties concerning their understanding of the contract language regarding plaintiff's obligation to seek to obtain a license. We must presume that, whatever the evidence introduced at trial, it supports the court's interpretation of the parties' agreement. (See *Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

Finally, nothing on the face of the record suggests the trial court erred in reaching its judgment. (See *National Secretarial Service, Inc. v. Froehlich, supra*, 210 Cal.App.3d at p. 521.) Indeed, correspondence from DSS introduced into evidence at trial appears on its face to support the court's conclusion that plaintiff breached the parties' understanding embodied in the settlement agreement that plaintiff would obtain her own operating license, as it shows plaintiff had withdrawn and closed her application for a license after it was determined she could not meet the required licensing criteria. That

correspondence also suggests it would have been impossible for plaintiff to have continued operating the facility using defendant's license because the state required defendant to forfeit her license; once the state required defendant to forfeit her license, her promise to allow plaintiff to use it to operate the facility for a year could have been excused as an impossibility. (See Civ. Code, § 1511 [no liability exists for breach of a contract whose performance has been made impossible by operation of law].)

As plaintiff has failed in this appeal to demonstrate error on the face of the record sufficient to warrant reversing the order (cf. rule 8.163), we shall affirm the judgment.

DISPOSITION

The judgment is affirmed.

BLEASE, J.

We concur:

RAYE, P. J.

BUTZ, J.