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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ALLEN THOMPSON,

Plaintiff and Appellant,

v.

HENRY DOERING et al.,

Defendants and Respondents.

C068208

(Super. Ct. No. 34-2008-
00024380-CU-CO-GDS)

In this pro se judgment roll appeal, plaintiff Allen Thompson contends the trial court erred in denying his request for a continuance of the trial. The trial court proceeded as scheduled upon the pleadings alone, and the court entered judgment in defendants' favor.

Finding no error, we shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.121(b).)¹ Thus, the appellate

¹ Further rule references are to the California Rules of Court.

record does not include a reporter's transcript of the proceeding at issue. This is referred to as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

The pleadings are not included in our limited appellate record.² One document submitted by defendants to the trial court describes the action as having been brought by plaintiff against his former landlords, seeking damages of \$17 million. By the time of trial, according to defendants, plaintiff's claims had been whittled to claims for "compensation for [p]laintiff's purported tenant improvements, and his purported personal injury claim arising from alleged toxic mold on the premises at issue."

As far as we can discern from the record, the matter was first set for trial in August 2010. One month before trial, in July 2010, plaintiff's counsel's request to be relieved as counsel was granted.

² By separate motion, plaintiff requests that we take judicial notice of various items of correspondence (copies of letters and e-mail) and their corresponding attachments or exhibits. One such exhibit is a minute order of the trial court's ruling in a pretrial discovery matter. With the exception of the minute order (to which they take no exception), defendants object to our taking judicial notice of these items. We hereby deny [p]laintiff's request: Taking judicial notice of the correspondence (including its attendant exhibits) would be inappropriate because plaintiff has not shown whether these items of correspondence were ever presented to the trial court and why they are relevant to this appeal. (Rule 8.252(a)(2)(A), (B); see also Evid. Code, §§ 451, 452.)

Trial was next set for November 2010. Four court days before trial, plaintiff (representing himself) sought ex parte to continue the trial; his application was denied. On the day set for trial, plaintiff failed to personally appear and the trial court dismissed the action with prejudice, but it later granted plaintiff's motion for reconsideration and/or for relief from the dismissal and reinstated the action. The case was ultimately set for trial on April 4, 2011.

On the day set for trial, plaintiff (now represented by new counsel) submitted a request to continue the trial date when he appeared for trial court assignment. Neither the request nor the bases upon which plaintiff sought the continuance appear in the record on appeal. The court (by Judge Hight) denied the request and assigned the matter to Judge Cadei for trial.

Plaintiff renewed his request before Judge Cadei to continue the trial. Again, the appellate record does not indicate on what grounds plaintiff sought to continue the trial. After the trial court denied plaintiff's motion to continue the trial, his attorney moved to withdraw as counsel; no one objected, and the motion was granted. The trial court's minute order states, "Plaintiff having no witnesses and no evidence, . . . submitted the trial on its pleadings. [¶] Thereafter, the Court ordered judgment be entered for the defendant against the plaintiff."³

³ Plaintiff characterizes the court's action as a "dismissal" of the case.

DISCUSSION

On appeal, we must presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we must adopt all inferences in favor of the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must present an analysis of the facts and legal authority on each point made, and must support the analysis with appropriate citations to the material facts in the record. If an appellant fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

When, as here, an appeal is "on the judgment roll" (*Allen v. Toten, supra*, 172 Cal.App.3d at pp. 1082-1083), 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.)

Plaintiff contends the trial court erred in denying his request to continue the trial, because he retained trial counsel

only three days before trial and new counsel needed more time to prepare.

A motion for a continuance of trial is addressed to the trial court's discretion, which will not be disturbed on appeal absent a clear showing of an abuse of discretion, and the burden rests on the complaining party to demonstrate from the record that the order was an abuse of discretion. (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984-985.) Motions to continue trial are generally disfavored (*Pham v. Nguyen* (1997) 54 Cal.App.4th 11, 17; rule 3.1332(a), (c)), and the court may grant a continuance "only on an affirmative showing of good cause" (rule 3.1332(c)), established by supporting declarations (rule 3.1332(b)). Circumstances that may indicate good cause for granting a continuance include the unavailability of an essential lay or expert witness because of death, illness or other excusable circumstances (rule 3.1332(c)(1)); the unavailability of a party because of death, illness or other excusable circumstances (rule 3.1332(c)(2)); the unavailability of trial counsel because of death, illness or other excusable circumstances (rule 3.1332(c)(3)); the substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice (rule 3.1332(c)(4)); the addition of a new party, under specified circumstances (rule 3.1332(c)(5)); a party's excused inability to obtain essential evidence, despite diligent efforts (rule 3.1332(c)(6)); and a significant, unanticipated change in the

status of the case resulting in the case not being ready for trial (rule 3.1332(c)(7)).

The trial court must also consider all other facts and circumstances relevant to the request, such as the proximity of the trial date (rule 3.1332(d)(1)); any prior requests for continuance (rule 3.1332(d)(2)); the length of the requested continuance (rule 3.1332(d)(3)); the availability of alternative means to address the problem that gave rise to the requested continuance (rule 3.1332(d)(4)); the prejudice the opposing party or witnesses would suffer if the request were granted (rule 3.1332(d)(5)); the effect, if any, of an entitlement to preference (rule 3.1332(d)(6)); the court's calendar (rule 3.1332(d)(7)); whether trial counsel is engaged in another trial (rule 3.1332(d)(8)); whether the parties have stipulated to a continuance (rule 3.1332(d)(9)); whether the interests of justice would be served by continuance (rule 3.1332(d)(10)); and any other relevant circumstances (rule 3.1332(d)(11)).

Absent a reporter's transcript of the proceedings at which Judges Hight and Cadei denied plaintiff's requests for a continuance of the trial, we must presume on appeal that official duties have been regularly performed (Evid. Code, § 664), and this presumption extends to the actions of trial judges (*Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 ["If the invalidity does not appear on the face of the record, it will be presumed that what ought to have been done was not only done but rightly done."]). This means we must assume—contrary to

plaintiff's suggestion on appeal—that these judges properly considered the factors prescribed by the Rules of Court and that their decisions to deny his request constituted appropriate exercises of their discretion. (Cf. *Forthmann v. Boyer*, *supra*, 97 Cal.App.4th at pp. 984-985.)

Nor are the denials of plaintiff's requests for a continuance erroneous on their face. (Cf. rule 8.163.) Plaintiff was without counsel after July 2010 and did not secure new counsel until three days before the April 4, 2011 trial date. The substitution of counsel may constitute good cause for a continuance only when there has been an affirmative showing "that the substitution is required in the interests of justice." (Rule 3.1332(c)(4).) The trial judges did not abuse their discretion in concluding that it did not serve the interests of justice to grant plaintiff's request for a continuance after he waited nine months to obtain new counsel, particularly in light of the fact that the trial had previously been continued at plaintiff's request (rule 3.1332(d)(2)) and the challenged request was made on the very day set for trial (rule 3.1332(d)(1)).

Plaintiff also asserts, without any citation to the facts in the record, that the trial court erred in allowing the July 2010 withdrawal of plaintiff's then-counsel; "closing discovery prematurely"; failing to supply "reasonable guidance for an in pro. per. litigant"; and abusing its discretion in "evaluating the validity of [plaintiff's] settlement offer." These

contentions, for the reasons we set forth above, are forfeited.
(*County of Solano v. Vallejo Redevelopment Agency, supra*,
75 Cal.App.4th at p. 1274; *Duarte v. Chino Community Hospital*,
supra, 72 Cal.App.4th at p. 856.)

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal. (Rule 8.278(a)(1), (2).)

BUTZ _____, J.

We concur:

BLEASE _____, Acting P. J.

NICHOLSON _____, J.