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

DANIEL KEITH WILSON,

Plaintiff and Appellant,

v.

BASCOM-PACIFIC LLC,

Defendant and Respondent.

C076824

(Super. Ct. No. SCCVCV130001455)

In this judgment roll appeal, plaintiff Daniel Keith Wilson, proceeding in pro per, challenges the trial court’s grant of defendant Bascom-Pacific, LLC’s special motion to strike pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute,¹ directed at causes of action for abuse of process and malicious prosecution based on an underlying infraction complaint filed by the Siskiyou County District

¹ Undesignated statutory references are to the Code of Civil Procedure. SLAPP is an acronym for “strategic lawsuit against public participation.”

Attorney against plaintiff for trespassing on timber land owned by defendant. After the infraction action was dismissed due to the non-appearance of the local game warden who issued the trespassing citation, plaintiff sued defendant for abuse of process and malicious prosecution. We conclude plaintiff has not carried his burden on appeal of demonstrating the trial court erred in granting defendant's anti-SLAPP motion and affirm the judgment.

BACKGROUND

Defendant owns timber land in Siskiyou County. Access roads leading onto the property are controlled by locked gates and accompanying "NO TRESPASSING" signs.

In September 2010, a fish and game warden issued a citation to plaintiff for trespassing on defendant's property in violation of Penal Code section 602, subdivision (n), and for failing to properly fill out and have countersigned a deer tag upon the killing of a deer, in violation of Fish and Game Code sections 4336 and 4341. The game warden explained in his incident report that he became aware of the trespass when defendant's property manager called him and reported plaintiff was bow hunting deer on the property. According to the report, during the game warden's investigation, plaintiff admitted to killing the deer on defendant's property and using a motorcycle to drag the animal off of the property, but claimed the Williamson Act (Gov. Code, § 51200 et seq.) prevented defendant from putting up gates to keep out the general public.

The following July, the Siskiyou County District Attorney filed an infraction complaint against plaintiff for trespass by driving. A trial date was set. When the game warden did not appear for trial, the action against plaintiff was dismissed.

In November 2013, plaintiff initiated the present lawsuit pro se by filing a form complaint alleging: "CLAIMANT WAS SUBJECT TO AN ABUSE OF PROCESS AND MALICIOUS PROSECUTION BY BEING CHARGED WITH THE CRIME OF

TRESPASS BY DRIVING ON PRIVATE PROPERTY BY A CRIMINAL COMPLAINT INITIATED BY THE FISH AND GAME DEPARTMENT WARDEN. PROPERTY IN QUESTION IS OWNED BY BASCOM-PACIFIC LLC AND IS OPEN SPACE AND DEFENDANTS ARE IN VIOLATION OF ARTICLE 13 SECTION 3 J AND ARTICLE 13 SECTION 8 OF THE CALIFORNIA CONSTITUTION. DEFENDANTS ARE ALSO IN VIOLATION OF THE TIMBER PRODUCTION ZONE CONTRACT.” The complaint then incorporated by reference various attached documents relating to the underlying infraction action, including the aforementioned incident report.

Reading the foregoing paragraph together with the attached documents, we understand the complaint to assert causes of action against defendant for abuse of process and malicious prosecution based on the report defendant’s property manager made to the game warden, i.e., plaintiff was trespassing on defendant’s property. According to plaintiff, that report was false because defendant’s land is “open space,” and therefore must be open to the public.

The following February, defendant filed an anti-SLAPP motion seeking to strike each of plaintiff’s causes of action. Defendant argued the anti-SLAPP statute applied to these causes of action because a report of criminal activity to proper authorities is a constitutionally protected activity, and subject to immunity under Civil Code section 47, subdivision (b), unless it “constitutes a knowingly false criminal report” under Penal Code section 148.5, and the complaint did not allege defendant’s property manager made the criminal report against plaintiff knowing it to be false. Turning to the legal and factual sufficiency of plaintiff’s causes of action, defendant argued the complaint did not allege any of the required elements of either cause of action, and therefore, plaintiff was unlikely to prevail on either one.

Plaintiff did not file an opposition to the anti-SLAPP motion. Instead, while the anti-SLAPP motion was pending, he filed an amended complaint omitting the abuse of process and malicious prosecution causes of action and instead seeking a judicial declaration that he possessed a right of access to defendant's property and an injunction preventing defendant from interfering with this right of access.

A hearing on the anti-SLAPP motion was held in April 2014. The record on appeal does not contain a reporter's transcript of this hearing. The following month, the trial court issued an order granting the anti-SLAPP motion, agreeing with defendant's position that the abuse of process and malicious prosecution causes of action fell within the anti-SLAPP statute and plaintiff did not establish a probability of prevailing on either cause of action. The order also ruled a demurrer filed concurrently with the anti-SLAPP motion was moot (this demurrer did not make its way into the record on appeal), entered a judgment of dismissal against plaintiff, and awarded costs and attorney fees to defendant.

DISCUSSION

Plaintiff appeals from the trial court's order granting defendant's anti-SLAPP motion. We conclude he has not carried his burden of demonstrating reversible error and affirm the judgment.

Section 425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) "[I]n applying the statute a court generally is required to engage in a two-step process: 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one

arising from protected activity. . . . If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.’ ” (*Taus v. Loftus* (2007) 40 Cal.4th 683, 712, quoting *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

We review the trial court’s ruling de novo, meaning we engage in the same two-step process as the trial court. (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1651-1652.) However, in doing so, we must also keep in mind “ ‘[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.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

In order to carry this burden of demonstrating reversible error, an appellant must provide an adequate record for us to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Because plaintiff has chosen to appeal on the judgment roll alone, 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.) In addition to an adequate record, an appellant’s briefing must state each point under a separate heading or subheading summarizing the point and support each point with argument and, if possible, with citation of authority. (Cal. Rules of Court, rule 8.204(a)(1)(B).) “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Although plaintiff is representing himself on appeal, he is nevertheless held to the “same ‘restrictive procedural rules as an attorney.’ ” (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.)

Here, while plaintiff appeals from the trial court's order granting defendant's anti-SLAPP motion, his appellate briefing does not provide any argument regarding the trial court's ruling on this motion. He does not argue the trial court erred in concluding his abuse of process and malicious prosecution causes of action arose from protected activity. Nor does he argue the trial court erred in determining he failed to demonstrate a probability of prevailing on either claim. Indeed, plaintiff cites neither the anti-SLAPP statute nor any cases interpreting this provision in his briefing on appeal. We therefore conclude any argument the trial court erred in striking plaintiff's abuse of process and malicious prosecution causes of action under the anti-SLAPP statute is forfeited for failure to adequately raise and brief the issue.

At the time the anti-SLAPP motion was filed, these were the only causes of action asserted in the lawsuit. However, while that motion was pending, plaintiff filed an amended complaint purporting to assert additional causes of action seeking a declaratory judgment and injunctive relief. Plaintiff's argument on appeal is that he is entitled to a trial because he possesses "overwhelming evidence" defendant's property is subject to a "conservation easement" and this easement precludes defendant from "denying public access" to the property, i.e., the matter as to which plaintiff's amended complaint sought declaratory relief. We disagree. It is generally the rule that a plaintiff or cross-complainant may not seek to subvert or avoid a ruling on an anti-SLAPP motion by amending the challenged complaint or cross-complaint in response to the motion. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1280, 1293-1294; see also *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.) We conclude that is what plaintiff attempted to do by filing his amended complaint rather than oppose the anti-SLAPP motion. Accordingly, the trial court was not required to consider plaintiff's amended complaint in ruling on the anti-SLAPP motion. Indeed, plaintiff's briefing on appeal does not acknowledge the foregoing rule or argue it is inapplicable to this case.

Accordingly, any such argument is also forfeited for failure to adequately raise and brief the issue.

DISPOSITION

The trial court's order granting the anti-SLAPP motion is affirmed. Costs on appeal are awarded to defendant Bascom-Pacific, LLC. (Cal. Rules of Court, rule 8.278(a).)

_____/s/
HOCH, J.

We concur:

_____/s/
NICHOLSON, Acting P. J.

_____/s/
DUARTE, J.