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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GREGG MILLS,

Plaintiff and Appellant,

v.

JERALD CRICKMORE,

Defendant and Respondent.

D060368

(Super. Ct. No.
37-2010-00051233-CU-PN-NC)

APPEAL from a judgment of the Superior Court of San Diego County, Jacqueline M. Stern, Judge. Affirmed.

I.

INTRODUCTION

Plaintiff and appellant Gregg Mills, appearing in propria persona, appeals a judgment of dismissal following the trial court's sustaining without leave to amend a demurrer to the complaint interposed by defendant and respondent Jerald Crickmore.

Because Mills has not met his burden as the appellant to demonstrate reversible error, we affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND¹

Mills, appearing in propria persona in the trial court, filed this action on February 11, 2010 against defendant Crickmore. Although Mills did not include the relevant documents in his Appellant's Appendix on appeal, it is clear from other documents in the record that Crickmore filed both general and special demurrers to the complaint.

The trial court sustained Crickmore's demurrers to the complaint on June 13, 2011, without leave to amend. In sustaining the demurrers, the court stated:

"Once again, Plaintiff has filed a complaint against Defendant Crickmore which is incomprehensible, does not state any viable cause of action, and does not comply with the formatting, labeling, and numbering requirements in California Rule[s] of Court[, rules] 2.111(6) and 2.112. [¶] To the extent the instant action alleges wrongdoing by Defendant as trustee of the Estate at issue in PN12988, pursuant to exhibit D1 to Defendant's request for judicial notice those issues have previously been decided against Plaintiff. Thus, any action based on that probate matter is barred by the doctrine of collateral estoppel. [¶] The burden is on Plaintiff to show in what manner he can amend the complaint and how the amendment would change the legal effect of the pleadings. [Citation.] Plaintiff has not met that burden here and thus the demurrers are sustained without leave to amend."

The trial court entered judgment against Mills and in favor of Crickmore on August 3, 2011. Mills filed a timely notice of appeal.

¹ As we describe in further detail in part III, *post*, the pleadings in this case make it difficult for this court to set forth a cogent factual background with respect to the conduct about which Mills is attempting to complain.

III.

DISCUSSION

Mills's opening brief on appeal is confusing and unintelligible. From the Appellant's Appendix that Mills filed, it appears that Mills is challenging the trial court's sustaining of Crickmore's demurrers without granting Mills leave to amend the complaint.

" 'A demurrer tests the legal sufficiency of the complaint, and the granting of leave to amend involves the trial court's discretion. Therefore, an appellate court employs two separate standards of review on appeal. [Citations] ¶ The complaint is reviewed de novo to determine whether it contains sufficient facts to state a cause of action.

[Citation.] The properly pleaded material factual allegations, together with facts that may be properly judicially noticed, are accepted as true. Reversible error exists if facts were alleged showing entitlement to relief under any possible legal theory. [Citation.]' " (*Lee v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal.App.4th 848, 853-854 (*Lee*), italics omitted.)

" 'Where a demurrer is sustained without leave to amend, the reviewing court must determine whether the trial court abused its discretion in doing so. [Citation.] It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. [Citation.] Regardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. [Citation.] *The burden is on the plaintiff to demonstrate how he or she can amend the complaint. . . .*

Plaintiff can make this showing in the first instance to the appellate court. [Citation.]' [Citation.]" (*Lee, supra*, 107 Cal.App.4th at p. 854 (original italics omitted; new italics added).)

An appellate court presumes that the judgment from which an appeal is taken is correct. (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) We adopt all intendments and inferences to affirm the judgment unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.) The appellant has the burden of overcoming the presumption of correctness, even when the appellate court is required to conduct a de novo review. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Further, an appellant's election to act as his or her own attorney does not entitle him or her to any leniency as to the rules of practice and procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

Mills's complaint, like his appellate brief, is completely unintelligible. It consists of rambling statements such as the following:

"Harrassment—Unappealable is overcoming by perjury by Mr. Crickmore in knowing he owed the Trust more money on the Arbitration doc[ument]. \$64,500. [¶] Frivolous is overcoming by entering the court within the 5 years allowed to complain about a Trust. Collateral Estoppel is overcoming perjury by Mr. Crickmore."

The remainder of the complaint is similarly incomprehensible. Mills's briefing on appeal does nothing to help shed light on the pleadings, nor does it demonstrate how Mills might be able to cure the defects in his complaint. Mills has failed to meet his

burden to demonstrate, either in the trial court or on appeal, that the defects in his complaint could be cured. We conclude that the trial court did not abuse its discretion in sustaining the defendant's demurrer without leave to amend.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.