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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WANDA BURSEY,

Plaintiff and Appellant,

v.

MICHAEL MCGOWAN et al.,

Defendants and Respondents.

D064953

(Super. Ct. No.
37-2012-00103712 CU-BC-CTL)

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

Wanda Bursey, in pro. per., for Plaintiff and Appellant.

Jan. I. Goldsmith, City Attorney, Joe B. Cordileone, Chief Deputy City Attorney,
for Defendants and Respondents.

I.

INTRODUCTION

Wanda Bursey, a former employee of respondent City of San Diego (City) sued the City and its employee, deputy city attorney Michael McGowan (collectively "respondents"). Respondents filed a demurrer to Bursey's first amended complaint. The trial court sustained the demurrer without leave to amend after concluding that Bursey's first amended complaint was "uncertain, vague and unintelligible" and failed to "state facts that support any element of the causes of action that [Bursey] has attempted to allege." The court entered judgment in favor of respondents.

On appeal, Bursey, acting in propria persona, filed a brief in which she appears to contend that the trial court erred in sustaining respondents' demurrer to her first amended complaint.¹ However, in the bulk of the legal argument portion of Bursey's brief, Bursey refers to the trial court's ruling sustaining a demurrer to her *original* complaint, rather than the trial court's ruling sustaining respondent's demurrer to the first *amended* complaint. In addition, Bursey's brief fails to comply with numerous rules of court and fails to present any cognizable legal argument demonstrating that she has stated, or could state, a viable cause of action against either respondent. Accordingly, we conclude that

¹ It is difficult to understand the precise nature of the claim or claims in Bursey's brief.

Bursey has failed to demonstrate that the trial court committed any reversible error, and we therefore affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2012, Bursey, acting in propria persona, filed a complaint against respondents alleging numerous causes of action. The trial court sustained respondents' demurrer to the complaint. In its ruling, the trial court stated that Bursey's complaint failed to comply with the California Rules of Court, and that it was "difficult to understand the specific acts [Bursey] was alleging [that respondents had] committed that form[ed] the basis of her complaint." The court also outlined the deficiencies of several of Bursey's causes of action. The court granted Bursey leave to amend her complaint.

Bursey filed a first amended complaint that contained 21 causes of action in May 2013. Bursey named both respondents in two of the causes of action—for wrongful termination and violation of the Unruh Civil Rights Act (Civ. Code, § 51). In the remaining 19 causes of action, including claims styled as "tortious interference," "Obstruction of Proceeding before departments, agencies, and committees," and "unclean hands," Bursey named only McGowan.

The primary factual allegation against McGowan in the first amended complaint was Bursey's assertion that McGowan "*induced* a lawsuit against his employer the [City], falsely identifying [Bursey] as the person bringing the action against the [City] where [Bursey] was never a party to the action." (Italics added.) Bursey appears to allege that

the purpose of McGowan's "induc[ing]" this lawsuit was to cause Bursey to lose her then-pending appeal with the Civil Service Commission, in which she was challenging the termination of her employment with the City. Bursey fails to allege how McGowan induced the filing of a lawsuit on her behalf, or to explain how McGowan's alleged activity in inducing the filing of the lawsuit constitutes a fact sufficient to state any of the causes of action in Bursey's first amended complaint.

As to the City, Bursey suggests that her employment with the City was terminated, and that her position has since been "filled by someone of the same nationality of the racist supervisor (discrimination)."

Respondents filed a demurrer in which they contended that the first amended complaint was unintelligible and failed to state facts sufficient to support any of the causes of action alleged.

The trial court sustained respondents' demurrer without leave to amend. The court ruled that Bursey's first amended complaint was "unintelligible" and that she had failed to state facts sufficient to state a cause of action with respect to any of her claims.

Bursey timely appealed from the judgment.²

² Bursey's notice of appeal indicates that she was appealing from the order sustaining the demurrer. An order sustaining an demurrer is not appealable (see, e.g., *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1290-1291). After this court requested that one of the parties obtain a judgment, the trial court entered a judgment in favor of respondents. We construe Bursey's notice of appeal as being from the judgment.

III.

DISCUSSION

The trial court did not err in sustaining respondents' demurrer to the first amended complaint

Bursey appears to contend that the trial court erred in sustaining respondents' demurrer to her first amended complaint.³

A. *Governing law and standard of review*

1. *The law governing demurrers and the standard of review*

"In evaluating a trial court's order sustaining a demurrer, we review the complaint de novo to determine whether it contains sufficient facts to state a cause of action." (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1589.) This court also applies the following well-established law in reviewing a trial court's order sustaining a demurrer without leave to amend:

"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the

³ While this appeal was pending, Bursey filed a motion to augment the record to include various documents. In her motion, Bursey fails to demonstrate that any of the documents are relevant to our disposition of this appeal. Accordingly, we deny the motion to augment. (See *Foothill Properties v. Lyon/Copley Corona Associates* (1996) 46 Cal.App.4th 1542, 1558, fn. 17 ["Because the [document] was not part of the record on appeal, Foothill moved to augment the record to include it. It is irrelevant, and we deny the motion."].)

complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).)

2. *General rules of appellate practice*

"As with any civil appeal, we must presume the judgment is correct, indulge every intendment and presumption in favor of its correctness, and start with the presumption that the record contains evidence sufficient to support the judgment." (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251.)

In order to defeat this presumption and obtain a reversal of a judgment, an appellant must comply with several basic rules. Compliance with such rules is necessary in order for this court to meaningfully perform its role as a reviewing court. To the extent that an appellant's brief fails to comply with these fundamental rules, this court is required to employ the presumption of correctness and affirm the judgment.

It is not this court's role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness. Rather, an appellant is required to present a cognizable legal argument in support of reversal of the judgment. "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) "Issues do not have a life of

their own: if they are not raised or supported by argument or citation to authority, [they are] . . . waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) Further, an appellant is required to explain the relevance of facts cited in his brief. This court is not "'obligate[d] . . . to cull the record for the benefit of the appellant . . ." (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455 (*Bains*).)

An appellant is also required to provide *proper* citations to the record, by citing to "either the clerk's or reporter's transcript." (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1258, fn. 12 [noting brief did not comply with Cal. Rules of Court, rule 8.204(a)(1)(C) in that it failed to contain "proper citations to the appellate record"].)

B. *Application*

It is difficult to discern from Bursey's brief the precise nature of her claim or claims. The vast bulk of the argument portion of her opening brief concerns the trial court's order sustaining a demurrer to her *original* complaint. However, because Bursey filed an *amended* complaint and the judgment from which Bursey appeals is based on the court's order sustaining respondents' demurrer to *that* complaint without leave to amend, any arguments concerning the *original* complaint are irrelevant and do not provide a basis for reversing the judgment. (See, e.g., *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 noting that "'[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading,' " and "the filing of an amended complaint renders moot a demurrer to the original complaint".)

Burse's opening brief also fails to comply with the rules of appellate practice in several material respects. The brief improperly attempts to incorporate pleadings from the trial court record.⁴ (See *Bains, supra*, 172 Cal.App.4th at pp. 466-467 [" [I]t is improper simply to incorporate by reference papers filed in the trial court' "].) The brief also makes numerous factual assertions without reference to the record.⁵ In addition Burse's opening brief contains numerous references to inapplicable legal principles⁶ and makes many conclusory statements with no legal or factual support.⁷

Despite the material deficiencies in Burse's brief, we have reviewed her first amended complaint in its entirety and conclude, as the trial court determined, that it is largely unintelligible and fails to state facts sufficient to state any cause of action against either respondent. Further, Burse has not demonstrated how she could amend the first

⁴ In her rendition of the procedural history of the case, Burse states, "A chronological account of the procedural history in the lower court as to its actions, motions, hearing, and orders relevant to the issues in this case can be found in [citation to the clerk's transcript]."

⁵ Burse provides an extensive discussion of an instance in which her supervisor "apparently entered the [City's computer] system and altered [Burse's] documents." Burse also describes a holiday scheduling request she made that was not honored. In addition, Burse states that her supervisor spoke with other potential employers in an attempt to discourage them from hiring Burse. Burse provides no citations to the record to support any of these statements.

⁶ For example, Burse's opening brief contains a discussion of the substantial evidence standard of review, which is inapplicable to this appeal.

⁷ Among the many examples of such statements, Burse states in her opening brief, "The proceedings in the lower Court were one-sided. Due Process had nothing to do with the lower Court's proceedings in this matter and was not had."

amended complaint to properly state any cause of action against either respondent. (See *Blank, supra*, 39 Cal.3d at p. 318 ["The burden of proving . . . [a] reasonable possibility [of amending a complaint to state a cause of action] is squarely on the plaintiff".])

Accordingly, we conclude that the trial court did not err in sustaining respondents' demurrer without leave to amend.

IV.

DISPOSITION

The judgment is affirmed. Bursey is to bear costs on appeal.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.