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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SAMIR ABADIR et al.,

Plaintiffs and Appellants,

v.

WELLS FARGO BANK, N.A. et al.,

Defendants and Respondents.

E058013

(Super.Ct.No. RIC10023900)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard,
Judge. Affirmed.

Samir Abadir and Mereille Abadir, in pro. per., for Plaintiffs and Appellants.

Alvaradosmith, Theodore E. Bacon and Rick D. Navarrette for Defendants and
Respondents.

Samir and Mereille Abadir’s (collectively, “the Abadirs”) real property was foreclosed upon. The Abadirs sued Wells Fargo Bank (the Bank) and others (1) to set aside the trustee’s sale; (2) to quiet title; and (3) for declaratory relief. The Abadirs failed to comply with discovery requirements. The trial court ordered the Abadirs to respond to the discovery requests and pay sanctions. The Abadirs again failed to comply with the discovery requirements. The trial court granted the Abadirs approximately three weeks to comply. The Abadirs again failed to comply with the discovery requirements. The trial court imposed terminating sanctions and dismissed the Abadirs’ complaint in its entirety with prejudice. (Code of Civ. Proc., § 2023.030, subd. (d) [terminating sanctions].)

The Abadirs contend the trial court erred by imposing terminating sanctions because (1) the Abadirs did not willfully fail to comply with discovery requirements; and (2) there was not a trial date pending, so Wells Fargo could not have suffered prejudice. We affirm the judgment.

DISCUSSION

A. WILLFUL NON-COMPLIANCE

The Abadirs contend the trial court erred by imposing terminating sanctions because their lack of compliance with discovery requirements was not willful.

We review a trial court’s imposition of terminating sanctions for an abuse of discretion. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390.) “The trial court may order a terminating sanction for discovery abuse ‘after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were

willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery.’ [Citation.] Generally, ‘[a] decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.’ [Citation.] Under this standard, trial courts have properly imposed terminating sanctions when parties have willfully disobeyed one or more discovery orders. [Citation.]” (*Ibid.*)

The Abadirs assert they contacted the Bank for a discovery extension. The Abadirs further assert they had difficulty complying with discovery requirements due to (1) losing their home and being forced to move residences; (2) the needed records being packed away for the move; (3) losing their office and being required to run their business from their home; and (4) “conducting an appeal for their son’s wrongful conviction.” The Abadirs also assert they had hired an attorney to handle the discovery requests, but the attorney ultimately gave the Abadirs the discovery requests and refused to continue with the case when the Abadirs could not produce the required documents. Further, the Abadirs assert they complied with the discovery requirements a few days prior to the trial court imposing terminating sanctions.¹

¹ Due to the Abadirs’ claim that they complied with the discovery requirements, we briefly searched the record to verify the allegation. On Monday, December 10, 2012, at the hearing in which the trial court imposed terminating sanctions, the Abadirs claimed to have complied with the discovery requirements. The Bank said it had not received any discovery from the Abadirs. Mr. Abadir provided the court with a delivery
[footnote continued on next page]

The problem we encounter in addressing the Abadirs' contention is that their Appellant's Opening Brief is devoid of citations to the record. The Abadirs do not direct this court to any portion of the record wherein we may find support for their various arguments. (Cal. Rules of Court, rule 8.204(a)(1)(C) [record citations].) The Abadirs have placed this court in the position of needing to comb the record to find evidence supporting their allegations; this court cannot perform such a task. As set forth in *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246, "The appellate court is not required to search the record on its own seeking error." [Citation.] Thus, "[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]" [Citations.]"

The lack of citations by the Abadirs is more troublesome due to the Bank pointing out the error in its Respondent's Brief. The Bank specifically faulted the Abadirs for failing to provide record citations. The Abadirs did not file an Appellant's Reply Brief with record citations or otherwise attempt to correct error. Due to the lack of record citations, we deem the Abadirs' "willfulness" contention to be waived.

[footnote continued from previous page]

confirmation receipt reflecting the discovery was mailed on Saturday, December 8. Mr. Abadir did not call the Bank to tell it the discovery would be sent "beyond the last minute." The trial court noted for the record that the Abadirs' proof of service reflected the documents were mailed "on Friday the 7th, when the delivery of the post office receipt clearly says [the Abadir's paralegal] mailed it on the 8th; so there's a problem with this proof of service. That affects [the paralegal's] credibility generally." The Abadirs gave the trial court the documents they alleged to have mailed. The trial court found the documents were "essentially the recorded documents, the deed of trust, and the date of various default notices," as opposed to the checks or receipts reflecting the Abadirs had been paying their mortgage. The trial court found the Abadirs failed to comply with the discovery requirements.

B. TRIAL DATE

The Abadirs contend the trial court erred by granting terminating sanctions because the Bank was not prejudiced by the lack of discovery responses, since a trial date had not yet been scheduled.

The Bank asserts it was not required to prove prejudice. The Bank contends it was only required to show the Abadirs willfully failed to comply with discovery requirements. Contrary to the Bank's position, one of the factors to be considered in a motion for terminating sanctions is "the detriment to the propounding party." (*Los Defensores, Inc. v. Gomez, supra*, 223 Cal.App.4th at p. 390.) Thus, prejudice/detriment is a factor.

The Abadirs were served with discovery requests on June 25, 2012. The motion for terminating sanctions was granted on December 10, 2012. Thus, the Abadirs were given approximately five and one-half months to respond to the Bank's discovery requests, but failed to do so. The Abadirs do not provide record citations to support an argument for weighing the different factors, e.g. willingness. (See *Los Defensores, Inc. v. Gomez, supra*, 223 Cal.App.4th at p. 390 [setting forth the factors for terminating sanctions].) The Abadirs also fail to support a purely legal argument. For example, they do not explain how, as a matter of law, the lack of a trial date means a five-month discovery delay is not detrimental. As a result, we cannot determine if the trial court erred under the facts specific to this case or as a matter of law.

As set forth *ante*, this court cannot comb the record to find evidentiary support for the Abadirs' arguments. Similarly, this court cannot furnish a purely legal argument

reflecting the other factors, such as willfulness, are essentially irrelevant if a trial date has not been scheduled. As set forth in *Doe v. Lincoln Unified School District* (2010) 188 Cal.App.4th 758, 767: ““An appellate brief “should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.” [Citation.] [¶] . . .

This court is not inclined to act as counsel for . . . appellant and furnish a legal argument as to how the trial court’s rulings . . . constituted an abuse of discretion.’ [Citation.]”

We realize the Abadirs are self-represented litigants. If we were given record citations related to detriment or sufficient legal arguments, we may have been able to fully address the Abadirs’ concerns. We do not relish finding waiver. However, this court cannot be expected to search for evidentiary support for an appellant’s arguments, and supply a developed legal argument on the appellant’s behalf. Doing so would be unfair to the respondent. (See *People v. Roscoe* (2008) 169 Cal.App.4th 829, 840 [fairness is one of the purposes of the procedural briefing rules].) The respondents should not have any less notice regarding the arguments they are addressing due to the appellants being self-represented. (*Nwosu v. Uba, supra*, 122 Cal.App.4th at pp. 1246-1247 [self-represented litigants are to be treated the same as other litigants and attorneys].) Since (1) the Abadirs do not provide record citations to support an argument for weighing the factors, and/or (2) fail to explain how, as a matter of law, the lack of a trial date means terminating sanctions cannot be imposed, we find the “prejudice” issue to be waived.

DISPOSITION

The judgment is affirmed. Respondent, Wells Fargo Bank, is awarded its costs on appeal.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.