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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

NADINE JIMENEZ,

Plaintiff and Appellant,

v.

JOHN PENA,

Defendant and Respondent.

E059101

(Super.Ct.No. INC1205626)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.

Affirmed.

Nadine Jimenez, in pro.per., and for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff and appellant Nadine Jimenez appeals the dismissal of her “first amended petition” wherein she claimed she had obtained adverse possession of property located in Palm Desert owned by defendant and respondent John Pena, Jr.

Jimenez has filed an opening brief that does not comply with the California Rules of Court and she has failed to provide a reporter's transcript of the proceedings below. Pena has not filed a response.

We affirm the trial court's order dismissing her action with prejudice.

I

OPENING BRIEF VIOLATES DIRECTIVES OF THE CALIFORNIA RULES OF COURT

An appellant's opening brief must "provide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204 (a)(2)(C).) Jimenez has not complied with this requirement as the facts referred to on pages three and four of her opening brief do not appear in the record. Furthermore, every factual assertion in a brief must be accompanied and supported by a citation to the record. (See Cal. Rules of Court, rule 8.204(a)(1)(C); *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29.) Jimenez refers only to the civil information sheet on page five of her opening brief which does not provide adequate information to this court. We have discretion to ignore assertions lacking proper record support. (See *Goodstein v. Cedars-Sinai Medical Center* (1998) 66 Cal.App.4th 1257, 1260, fn. 1.) On this basis, we may ignore the entirety of Jimenez's presentation of the facts.

Additionally, Jimenez has not set forth any legal authority that addresses the issue that was before the trial court: whether Jimenez had proven she had acquired title of Pena's property by adverse possession. Issues not supported by pertinent legal argument or citation of authority may be deemed waived. (See *Associated Builders & Contractors*,

Inc. v. San Francisco Airports Com. (1999) 21 Cal.4th 352, 366, fn. 2.) On this basis, we may ignore the entirety of Jimenez’s argument as well.

Furthermore, Jimenez has not included in the record a reporter’s transcript of the proceedings. It is the appellant’s burden to provide an adequate record for appellate review of his or her claims. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) “Where no reporter’s transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.]” (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) Jimenez has failed to meet her burden on appeal of proving error occurred in the trial court.

II

MERITS

Even if were to disregard all of the procedural problems with Jimenez’s opening brief, we conclude on the record before this court that the trial court did not abuse its discretion in dismissing Jimenez’s action.

What we can garner from the sparse record in this case is that on August 9, 2012, Jimenez filed an ejectment action for the property located at 72926 Grapevine Street in Palm Desert. Jimenez stated that she had been removed from the property by “4-6 police officers” and Pena had lied to the officers. Jimenez claimed she had superior title to the property over Pena, who based on the tax records submitted by Jimenez, was the owner of the property. She pleaded superior title by adverse possession and estoppel. The tax

status report showed the taxes on the property had been paid for 2011/2012, but did not specify who paid the taxes. Jimenez also served Pena with a default notice, which included language that Pena would give up his rights to the property in favor of her.

On May 16, 2013, the matter was heard as to Jimenez's request for default from Pena. The trial court denied the request for default and then set the matter for a dismissal hearing. On June 5, 2013, the trial court rejected Jimenez's attempt to file a statement of facts as it was not accompanied by a motion or other properly filed document, it did not comply with the Code of Civil Procedure or California Rules of Court, and was not served on Pena.

In a minute order dated June 25, 2013, the trial court referred to a first amended petition. According to the civil case information sheet, the amended petition was filed on August 10, 2012. The amended petition has not been provided to this court.

The trial court issued a written ruling dismissing the first amended petition. According to the written ruling, Jimenez apparently alleged in the first amended petition that she obtained the right to title of the subject property by adverse possession. The trial court noted that Pena had been defaulted and Jimenez had not served "all persons unknown" which she referred to in the first amended petition. The trial court referred to testimony provided by Jimenez at the default judgment hearing. Jimenez claimed she had lived on the Grapevine property from August 2011 to October 2011, a period of only three months. Pena forcibly removed her from the property.

Jimenez had also testified she had observed the property was vacant and she discovered the taxes had not been paid. Jimenez insisted she paid the entire amount of

property taxes for 2011/2012 in the amount of \$2,256.10. She also gave the County of Riverside a promissory note in the amount of \$10,600 to cover property taxes, but was not sure what time period this amount covered.

The trial court ruled, “Petitioner’s evidence clearly fails to establish that she has title to the subject property by adverse possession. To obtain such title, petitioner must have occupied the property for five years in an open and notorious manner and paid the property taxes for that five-year period. *Cal. Civ. Proc. Code* §§ 321, 325 (b). She has done neither. Her testimony demonstrated that she only occupied the property for three months, far less than the required five years. Further, she paid the taxes for only one year. There is no basis for her claim that she was entitled to pay the other taxes by a promissory note, nor sufficient evidence to conclude that the note she claimed to send to Riverside County was in the correct amount for the taxes for the four years preceding the single year’s taxes that she actually paid.”

Jimenez’s request for a default judgment against Pena and all unknown persons was denied. The trial court entered judgment in favor of defendants and dismissed the action with prejudice. The judgment was filed on June 25, 2013. Jimenez filed her notice of appeal on June 26, 2013.

Code of Civil Procedure section 325, subdivision (b) provides as follows: “In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and

assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.”

“In an action to quiet title based on adverse possession the burden is upon the claimant to prove every necessary element: (1) Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner's title. (3) The holder must claim the property as his own, under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period. [Citations.]’ ” (*Preciado v. Wilde* (2006) 139 Cal.App.4th 321, 325.)

“[S]uch possession cannot be made out by inference, but only by clear and positive proof.” (*Kraus v. Griswold* (1965) 232 Cal.App.2d 698, 709.)

Here, we must presume that evidence that was presented to the trial court supported the order as Jimenez has not provided the reporter’s transcript. (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992.) Since Jimenez only lived in the property for three months and could not show that she paid taxes for five years, she failed to meet her burden of establishing adverse possession.¹

¹ Jimenez submitted oral argument to this court in writing. Attached to her argument she included a document purporting to be a bank statement. The bank statement included a payment to “Cnty of Riverside Tax Col” in the amount of \$2,301.22. Even if this was payment for the taxes on the Grapevine Street house, this does not prove she paid for five years of taxes.

III

DISPOSITION

The trial court's order dismissing Jimenez's first amended petition with prejudice is affirmed.

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RICHLI
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.