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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

BRUCE PATRICK HANEY,

Appellant,

v.

M. LOPEZ et al.,

Respondents.

F063553

(Super. Ct. No. 10-C-0255)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Bruce Patrick Haney, in pro. per., for Appellant.

Beeson Terhorst, Jeffrey E. Beeson and Michael A. Terhorst for Respondents.

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* Before Hill, P.J., Levy, J. and Kane, J.

Petitioner appeals from the denial of his petition for writ of mandate requiring prison personnel to return his property or compensate him for its loss. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On October 1, 2009, a correctional officer at Corcoran State Prison, where petitioner is an inmate, conducted a search of petitioner's cell in petitioner's absence. During the search, the officer allegedly confiscated a pair of Reebok tennis shoes and damaged petitioner's compact disc (CD) player. Petitioner appealed through the prison's appeal process, contending the CD player was damaged by the correctional officer who searched his cell and the confiscated shoes were new and belonged to him, while the pair with which he was left was old and did not belong to him. Petitioner sought the return of his property or compensation for its loss. Respondents contended petitioner was entitled to possess only one pair of tennis shoes, but he had three; the Reebok tennis shoes were excess property seized as contraband. Respondents also asserted the correctional officer who confiscated the shoes did not damage the CD player. Petitioner's prison appeals were denied, and he filed a petition for writ of mandate with the trial court. The writ petition alleged petitioner twice asked to trade the old shoes he retained for the confiscated shoes, but the correctional officers refused. Thereafter, when an officer offered to trade the new Reeboks for the old shoes, petitioner could not trade because he had returned the old shoes to their owner. Subsequently, prison officials destroyed the Reebok tennis shoes before completion of the appeal process. The trial court denied petitioner's writ petition without explanation. Petitioner appeals.

DISCUSSION

“Section 1085 of the Code of Civil Procedure authorizes a trial court to issue a writ of mandate to compel an act which the law specifically requires. A petitioner seeking a writ of mandate under this section is required to show the existence of two elements: a clear, present and usually ministerial duty upon the part of the respondent,

and a clear, present and beneficial right belonging to the petitioner in the performance of that duty.” (*Bergeron v. Department of Health Services* (1999) 71 Cal.App.4th 17, 21-22 (*Bergeron*)). On review of the trial court’s action, we apply the substantial evidence test to the trial court’s factual findings and exercise our independent judgment on legal issues. (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 53.) We presume the judgment is correct and public officials have performed their duty as required by law. (*Cosgrove v. County of Sacramento* (1967) 252 Cal.App.2d 45, 50.) The burden is on appellant to show reversible error. (*Ibid.*)

Petitioner does not clearly identify any law or regulation imposing a mandatory duty on respondents, with which he seeks to compel them to comply. He argues that respondents were only authorized to confiscate contraband (Cal. Code Regs., tit. 15, § 3006), and the Reebok shoes were not contraband because they were his registered property. He cites operational procedure No. 806, which states: “When staff determines that an inmate is in excess of the six cubic foot limit, the inmate shall normally be responsible for identifying the items of personal property to be discarded.” His argument seems to be that, if his shoes exceeded the applicable limit, he should have been given a choice of which pair to keep and which to have confiscated, and he would have chosen to keep the Reebok shoes; he was not given that choice, so the Reebok shoes should be returned to him or he should be compensated for them.

Inmates are permitted to “possess only those items of personal clothing specifically authorized by the institution head and acquired pursuant to these regulations.” (Cal. Code Regs., tit. 15, § 3030, subd. (c).) Contraband is defined as “anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source.” (Cal. Code Regs., tit. 15, § 3000.) “Inmates may possess only the personal property . . . , up to the maximum amount, received or obtained from authorized sources, as permitted in these regulations. Possession of contraband as defined in section 3000 may result in disciplinary action and

confiscation of the contraband.” (Cal. Code Regs., tit. 15, § 3006.) Thus, property in the possession of an inmate in excess of the maximum amount permitted is contraband, subject to confiscation.

According to the writ petition, the correctional officer confiscated petitioner’s shoes because he was allowed only one pair and three pairs were found in his cell. Petitioner cites no law, regulation, or other authority that mandated that the correctional officer permit the inmate to choose which pair of shoes should be confiscated. The operational procedure he cites applies when an inmate’s volume of personal property exceeds the six cubic foot maximum. (See Cal. Code Regs., tit. 15, § 3190, subd. (c), “The combined volume of state-issued and allowable personal property items shall not exceed six cubic feet, except as specifically allowed in these regulations.”) It does not, by its terms, apply when an inmate is in possession of more pairs of shoes than allowed. There was no allegation by respondents that petitioner’s personal property exceeded the six cubic foot limit.

Additionally, the portion of operational procedure No. 806 cited by petitioner does not impose a mandatory duty on respondents. It provides that “the inmate shall normally be responsible for identifying the items of personal property to be discarded.” It imposes a responsibility on the inmate; it does not mandate action by correctional officers. Moreover, it provides what should “normally” occur, without mandating that it occur in every instance. Consequently, petitioner failed to establish the first requisite for issuance of a writ of mandate: “a clear, present and usually ministerial duty upon the part of the respondent.” (*Bergeron, supra*, 71 Cal.App.4th at p. 22.)

Petitioner argues that he proved his ownership of the Reebok shoes. Respondents, however, did not challenge his ownership of the Reebok shoes in the trial court. The shoes were not confiscated because prison officials concluded petitioner did not prove ownership. They were confiscated because he had more pairs of shoes in his possession than he was permitted to have. Petitioner did not in the trial court, and does not here,

deny that he had more than one pair of shoes in his cell at the time the correctional officer confiscated the Reebok tennis shoes. Substantial evidence supports the trial court's decision, regardless of ownership of the shoes.

Petitioner's briefs contain no legal argument with citation of authority to establish any error in the trial court's decision on his claim that his CD player was damaged by respondents. Where an appellant's brief contains no legal argument with reasoned analysis and citation to authority, the court may treat the point as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Consequently, we need not consider whether the trial court's decision on that claim was correct.

DISPOSITION

The judgment denying the writ of mandate is affirmed. In the interests of justice, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)