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

DECHERI HAFER,

Plaintiff and Appellant,

v.

DEAN ALLEN HARTHORN,

Defendant and Respondent.

F070858

(Super. Ct. No. S1500CV281483)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. David R. Lampe, Judge.

DeCheri Hafer, in propria persona, for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

-ooOoo-

DeCheri Hafer is a self-represented litigant who filed a complaint against Dean Harthorn alleging he defamed her by having her falsely arrested. The trial court sustained Harthorn's demurrer to her complaint with leave to amend, but Hafer did not amend the complaint. The trial court subsequently granted Harthorn's ex parte

* Before Gomes, Acting P.J., Peña, J. and Smith, J.

application to dismiss the case due to Hafer's failure to file an amended complaint. On appeal from the resulting judgment that dismissed her action without prejudice, Hafer contends, among other things, that the trial court erred in dismissing the action as she was not properly served with notice of the ex parte hearing, the trial court erroneously rejected her numerous attempts to obtain a default judgment, and the order dismissing the action was not timely entered. As Hafer fails to affirmatively show either error or prejudice, we affirm the judgment of dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

On March 14, 2014,¹ Hafer filed a complaint against Harthorn for defamation arising out of an incident that allegedly occurred at the Kern County courthouse on May 10, 2012. Hafer alleged she was arrested and charged with two felonies after Harthorn falsely told police she had assaulted him. The complaint listed Hafer's address as 23 Milham Drive in Bakersfield (the Milham address). Thereafter, she made several attempts to file proofs of service of the summons and complaint on Harthorn, but the court clerk rejected them due to various deficiencies. An order to show cause hearing regarding service ultimately was scheduled for October 20.

On August 25, Hafer attempted to file another proof of service and a request for a default judgment. Some of the documents Hafer attempted to file listed her address as 133 Chester Ave. #C in Bakersfield (the Chester address). The court clerk returned the documents to Hafer at the Chester address on September 2 due to deficiencies in the proof of service, and reminded Hafer that a case management conference was scheduled for September 10. The following day, the court clerk rejected and returned to the Chester address another proof of service and request for default that Hafer attempted to file on September 2.

¹ References to dates are to the year 2014, unless otherwise stated.

On September 8, Hafer filed a “Request for Accommodations by Persons with Disabilities and Response,” which listed the Chester address, in which she requested accommodations for the September 10 hearing in the form of a video of the hearing, with audio included, because she has problems seeing and hearing.² Hafer and Harthorn both appeared in propria persona at the September 10 case management conference; the trial court found the default packet had been rejected on September 3 and set a further case management conference for November 10.

On September 11, Hafer filed a declaration in which she stated that Harthorn knew about the lawsuit since March 21 and he was personally served with the summons and complaint at his home on June 5 and 24. She asked the court to approve the default judgment submitted on September 5 and listed the Chester address on the declaration.

On September 19, Hafer filed a proof of service of summons, which listed the Chester address and stated the summons and amended complaint were both personally served on Harthorn on June 24, and left with a competent member of his household.

On September 25, the court clerk rejected another declaration that Hafer attempted to file on September 9, because there was no proof of mailing to the defendant attached and the proof of service referenced in the declaration was stricken from the record on June 27. The rejected documents listed Hafer’s address as the Chester address.

On October 2, Harthorn, through his attorney, filed a demurrer, in which he argued that the one-year statute of limitations for defamation claims barred the complaint, as Hafer alleged the incident occurred on May 10, 2012 but the complaint was not filed until March 14, 2014. Harthorn also argued the complaint was uncertain on its face. Harthorn asked the trial court to sustain the demurrer without leave to amend. The demurrer was

² The request was not addressed until after the case was dismissed in January 2015; at that time it was deemed moot due to the dismissal.

served on Hafer by mail at both the Chester address and at “23 Milnam Drive.” The hearing on the demurrer was set for October 29.

On October 10, Hafer filed a declaration in which she demanded that the October 20 order to show cause hearing and the November 10 case management conference be removed from the court calendar, as she had submitted “all paperwork to cancel the above hearings” and there was no reason for her to attend them since the court had all the necessary paperwork, including the proof of service. Hafer also demanded that a default judgment be entered in her favor. Hafer listed her address on the declaration as the Chester address.

On October 15, the court clerk rejected and returned the proof of service file-stamped September 19, as well as a request for entry of default and judgment file-stamped on September 30. The clerk explained the filings were rejected because the documents were copies that had been rejected previously, and the court needed originals, not copies. The clerk further explained that due to the pending hearing on the demurrer, only a proof of service could be filed until the court ruled on the demurrer.

On October 15, Hafer filed a motion to quash proof of service, with a hearing date set for October 27, which Hafer stated was regarding the proof of service declared to have been served between October 2 and 3. She asserted she never received notice of the hearing and demanded the hearing be removed from the court calendar. Hafer listed her address on the motion and proof of service as the Chester address.

On October 17, Hafer filed a declaration in which she stated the clerk should not have rejected the request for default filed on September 30 because an original proof of service was filed on September 19. She also filed a second declaration in which she asked that the hearing on the demurrer be vacated, as Harthorn was served with the complaint on June 24 and he failed to respond within 30 days. Both declarations listed her address as the Chester address.

The trial court denied Hafer's motion to quash at the October 27 hearing, as Hafer did not provide adequate notice of the motion and Harthorn refused to waive the defect in service. That same day, Harthorn's attorney filed a notice of no opposition to the demurrer, which asked the trial court to sustain the demurrer without leave to amend since an opposition had not been filed or served. The notice was served on Hafer by mail at both the Chester and "23 Milnam Drive" addresses.

Hafer appeared in propria persona at the October 29 demurrer hearing. After the matter was argued and submitted, the trial court sustained the special demurrer, overruled the general demurrer as moot, and granted Hafer 20 days leave to amend from date of service of the formal order. The court clerk mailed a copy of the minute order to Hafer at the Chester address. On October 30, Harthorn's attorney filed a written order, which stated that the demurrer was sustained with leave to amend, and Hafer had 20 days from the date notice of the order was given to file and serve an amended complaint. The attached proof of service shows the notice was mailed to Hafer at the Chester address on October 29.

On November 4, Hafer filed two declarations, each of which listed her address as the Chester address. Hafer asserted she never received notice of the demurrer hearing. She demanded that further hearings be vacated and Harthorn's default entered. Filed with the declaration was another request for entry of default, and a motion to strike the demurrer, which listed her address as the Chester address. The court clerk notified Hafer the following day that while the pleadings had been filed, she needed to re-notice the hearing, as the hearing date listed on the declaration, November 29, fell on a weekend.

Hafer did not appear at the November 10 case management conference, while Harthorn appeared through his attorney. The cause was continued to January 6, 2015, for a further case management conference, and Harthorn's attorney ordered to give notice. That same day, Harthorn's attorney filed a notice of the continued case management conference, which was served on Hafer by mail at the Chester address.

On November 14, Hafer filed yet another request for entry of default, which listed her address as the Chester address. On November 18, Harthorn's attorney served notice of entry of the order sustaining the demurrer and granting leave to amend on Hafer by mail at the Chester address and another address, 901 Union Avenue #6, Bakersfield, CA 93301.³

Hafer did not appear at the November 20 hearing on her motion to strike the demurrer. The trial court denied the motion without prejudice to filing a renewed motion on proper notice. The court clerk mailed the minute order to Hafer at the Chester address.

On November 24, Hafer again filed a request for entry of default, which listed the Chester address as hers. On December 9, she re-filed her motion to strike the demurrer, which listed her address as the Chester address and set a hearing date for 8:30 a.m. on December 19 in Department 11.

On December 16, Harthorn gave written notice of his ex parte application for an order dismissing the action for failure to amend the complaint. The application stated that Harthorn was moving, ex parte, for an order dismissing the action in its entirety on the grounds that (1) the trial court sustained Hafer's demurrer to the complaint on October 29, (2) the trial court signed the formal order sustaining the demurrer on October 30, (3) the notice of the ruling was served on Hafer on November 18, (4) Hafer failed to file or serve an amended complaint within 20 days, and (5) Harthorn had not granted Hafer an extension of time to file an amended complaint. The hearing was scheduled for 8:30 a.m. on December 19 in Department 11. The notice was served on Hafer at the Chester address both by mail and personal service.

³ The Union Avenue address was the address of a hotel Hafer claimed she was staying at the time of her arrest in 2012.

Hafer did not appear at the December 19 hearing on her motion to strike, while Harthorn appeared through his attorney. The trial court denied the motion because Hafer did not provide adequate notice of the hearing and Harthorn's attorney refused to waive the defect in service. The court clerk mailed a copy of the minute order to Hafer at the Chester address.⁴

On December 26, Hafer filed another motion for a default judgment, which listed the Chester address and set the hearing for "1/14/2014." Three days later, on December 29, Hafer filed a notice of appeal, which listed her Chester address. Hafer purported to appeal from multiple "judgments."⁵ On December 31, the court clerk rejected the December 26 motion because the hearing was noticed for 2014.

The trial court subsequently signed the order on Harthorn's ex parte application, which dismissed the action in its entirety without prejudice and allowed Harthorn to recover his costs of suit. To the left of the judge's signature the typed date of "December ____" is crossed out and "Jan. 5" written above it. The year "2014" that was typed next to "December ____", however, was not changed, so the date of signature appears as "Jan. 5, 2014." While the superior court's file stamp on the ex parte application states it was filed on "JAN 5, 2014[,]" the docket shows the order was entered on January 5, 2015.

On January 6, 2015, Harthorn filed written opposition to the motion for default judgment, arguing it should be denied because the case was dismissed the previous day. Harthorn also argued that a default judgment in Hafer's favor was not justified or warranted because, even if he was late in responding after being served with the

⁴ Neither the minute order nor the register of actions show that a hearing occurred on Harthorn's ex parte application.

⁵ We subsequently deemed the prematurely filed notice of appeal as being timely from the "Notice of Order Dismissing Action Without Prejudice" entered on January 9, 2015.

complaint, (1) there would have been justifiable cause to set the default aside, (2) the trial court had discretion to grant relief from default under Code of Civil Procedure section 473,⁶ and (3) he timely appeared by means of demurrer, which was sustained, and Hafer abandoned her action by failing to file and serve an amended complaint.

On January 9, 2015, Harthorn filed a “Notice of Order Dismissing Action Without Prejudice[.]” by which he gave Hafer notice on January 8, 2015 of the order dismissing the action, both by mail and personal service at her Chester address.

DISCUSSION

Our discussion of the merits of Hafer’s appeal begins with a review of some of the fundamental rules that govern how appellate courts perform the task of determining whether the trial court committed reversible error.

The first rule is that appellate courts presume the trial court’s judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) In explaining this rule, the California Supreme Court stated: “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Ibid.*) The net effect of the presumption of correctness and its corollary that an appellant must affirmatively demonstrate error is that an appellant will not win on appeal without presenting materials that show the trial court made a mistake. Usually, those mistakes can be categorized as either (1) a mistake in finding facts or (2) a mistake in identifying the correct rule of law and applying it to the facts. Here, Hafer’s assertions of error fall within the second category, namely legal error.

To affirmatively show legal error by the trial court, an “appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] . . . [C]onclusory claims of error will fail.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) When points are perfunctorily raised

⁶ Undesignated statutory references are to the Code of Civil Procedure.

on appeal, without adequate analysis and authority, we pass over them and treat them as abandoned. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) Moreover, “ ‘[t]he burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice.’ ” (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.) That is, an appellant must not only show that error occurred, but that it likely affected the outcome. (*People v. Watson* (1956) 46 Cal.2d 818, 836 [reversal not warranted unless it appears “reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error”].)

Because Hafer is representing herself in this litigation, we also note that the Court of Appeal treats self-representing litigants like any other party. As a result, they are held to the same rules of appellate procedure as parties represented by an attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247 [appellant representing self on appeal must follow correct rules of procedure].) A self-represented litigant is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Ibid.*; see *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 [self-represented parties are held to “the same ‘restrictive procedural rules as an attorney’ ”].)

With these principles in mind, we turn to Hafer’s contentions of error. While Hafer raised a number of claims, her primary complaint is that the trial court erred in granting the ex parte application for the order dismissing the action because (1) she was denied due process since the application was not served on her at the Milham address either personally or by mail, and (2) the trial court’s order was dated 2014.

With respect to service of the application, Hafer asserts that all mail should have been addressed to the Milham address, not the Chester address, because the complaint and summons listed the Milham address and she never filed an address change with the court. Hafer claims that because notice of the hearing was not mailed to the Milham address or personally served on her there, she did not have an opportunity to attend the

December 19 hearing or to rebut the application, as she never received notice of that hearing. She also asserts that under section 1005, she was entitled to 16 days notice of the ex parte hearing, yet the application was served only three days before.

Under section 581, subdivision (f)(2), the trial court may dismiss a complaint after a demurrer has been sustained with leave to amend if the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal. Here, Hafer was given 20 days leave to amend the complaint, which began to run from the date she was served with notice of the trial court's ruling on the demurrer. Harthorn served notice of entry of the order sustaining the demurrer on Hafer on November 18, which meant that she had until December 8 to file her amended complaint.⁷ Harthorn filed the ex parte application for dismissal and provided notice of the hearing to Hafer, both personally and by mail, three days before the hearing. According to California Rule of Court, rule 3.1203, Harthorn need only have provided notice to Hafer no later than 10 a.m. the court day before the ex parte appearance.

Hafer claims she did not receive notice of the hearing. Even if true, and assuming a hearing occurred on December 19, Hafer fails to explain how she was prejudiced. In the trial court, she failed to meaningfully oppose the demurrer, received leave to amend anyway, but then declined to exercise that option. Instead, she filed a series of requests for default and motions to strike, each of which listed the Chester address as hers. In the trial court and in this court, she has not offered any reason or excuse for failing to file an amended pleading within the time set by the court, which expired on December 8.

⁷ While Harthorn served the notice on Hafer at the Chester address, the register of actions shows that the court clerk was mailing documents to Hafer at that address and the address corresponds with the address Hafer provided on documents she previously filed with the court. (See § 1013, subd. (a) (service by mail must be addressed either to the recipient's place of residence or to the office address as last given by the recipient on any document filed in the cause and served on the party making service).

Although Harthorn waited eight days to file his ex parte application for dismissal, Hafer still had not amended her complaint. Hafer does not explain what she would have argued had she appeared at the ex parte hearing that would have precluded dismissing the action, such as that she had prepared an amended pleading. Accordingly, we see no prejudice to Hafer in proceeding with the ex parte application even if the lack of notice deprived Hafer of an opportunity to be heard.

With respect to the date of the order, Hafer asserts she could not be at the hearing on the application because it was scheduled for January 5, 2014 – three months before the lawsuit was filed. Hafer asks us to vacate and set aside the order made on “01/05/2014[,]” because it was made before the case was filed and she was never notified about that “hearing.” Hafer, however, is mistaken about the nature of the ex parte application. The application was set for hearing on December 19. The trial court, however, did not sign the order until January. There is nothing in the record to indicate that a hearing was held in January. As for the date of the signature, it is apparent from the record that including the year “2014” was merely a clerical error, and the order actually was signed on January 5, 2015, as reflected in the register of actions.

Hafer raises other assertions of error, but without analysis or citation to relevant legal authority. She contends: (1) her requests for default judgment were all wrongfully denied, as she personally served Harthorn on June 24 and he did not respond within 30 days; (2) because she was entitled to a default judgment, the trial court “illegally scheduled” the hearing on the demurrer; (3) the trial court erroneously denied her November 4 motion to strike the hearings; and (4) her right to receive accommodation was violated from September 8 through “01/05/2014” by the denial for her request for courtroom assistance due to her disabilities.

As we have stated, when a party fails to cite authority or fails to present legally supported analysis for its argument, we may treat the issue as waived or meritless and need not consider it further. (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th

964, 1004; *Estate of Cairns* (2010) 188 Cal.App.4th 937, 949.) Here, Hafer's assertions of error are cursory arguments unsupported by either citation to relevant authority or the record, meaningful discussion, or an explanation as to why these alleged errors were prejudicial. Accordingly, we decline to consider them.

In sum, Hafer has failed to satisfy her appellate burden of showing that the trial court committed reversible error when it dismissed this action without prejudice.

DISPOSITION

The judgment is affirmed.