

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

PAMELA C. McCAFFERY,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

F071301

(Super. Ct. No. MCV058127)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. James E. Oakley, Judge.

Pamela C. McCaffery, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Kristin G. Hogue, Assistant Attorney General, Peter A. Meshot and James W. Walter, Deputy Attorneys General, for Defendants and Respondents.

-ooOoo-

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

Plaintiff Pamela C. McCaffery received medical care while she was an inmate of Valley State Prison for Women. After complications arose, she filed the instant action, alleging negligent care and treatment, and naming as defendants, among others, the State of California and Drs. P. Virk and N. Malakkla, the latter being medical practitioners employed by the California Department of Corrections and Rehabilitation (CDCR). The trial court granted a motion for summary judgment in favor of defendants, and plaintiff filed the present appeal. Because plaintiff has not demonstrated prejudicial error based on an adequate record and cogent legal argument, plaintiff has not met her burden as appellant. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff filed a personal injury complaint on November 1, 2011, in Madera County Superior Court. In addition to suing the State of California, plaintiff named three doctors and the Madera Community Hospital administrator as defendants. Two of the defendant doctors, Virk and Malakkla, allegedly provided medical care to plaintiff while she was incarcerated at Valley State Prison for Women in Chowchilla. The remaining doctor, Dr. Pannu, allegedly provided medical care to her at Madera Community Hospital. In paragraph 9 of her Judicial Council form complaint, plaintiff failed to allege that she complied with the government tort claims statute, as required, and she simply handwrote "Unknown by Plaintiff" underneath the appropriate box.

Plaintiff's theory was that the medical care she received at Valley State Prison for Women and at Madera Community Hospital was inadequate to treat her postsurgical wounds. Her complaint alleges that a diagnosis of osteomyelitis was improperly made, and that she suffered adverse physical reactions to the treatment she received.

A motion for summary judgment was made in the trial court by defendants State of California, Virk and Malakkla. On January 21, 2015, the trial court granted the motion. It appears from the registrar of actions that judgment was entered by the trial court.

Plaintiff filed the instant appeal. However, plaintiff's opening and reply briefs do not intelligibly disclose, much less discuss, any issue or issues potentially constituting grounds of prejudicial error. Nor has plaintiff provided supporting legal authority or citation to an adequate record. Defendants State of California, Virk and Malakkla respond that we should deny the appeal on the ground that plaintiff failed to meet her burden as appellant. Additionally, defendants note that the summary judgment motion was properly granted because plaintiff admits to having failed to comply with the Government Claims Act (Gov. Code, § 910 et seq.). As discussed below, we agree with defendants on both points.

DISCUSSION

Because a judgment or order of a lower court is presumed to be correct on appeal, error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Thus, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656; *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523.) “[T]he trial court’s judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited.” (*Keyes v. Bowen, supra*, at p. 655.) When points are perfunctorily raised, without adequate analysis and authority or without citation to an adequate record, the appellate court may pass them over and treat them as abandoned or forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) Furthermore, a failure to provide an adequate record for meaningful review of an issue requires that the issue be resolved against the appellant. (*Gee v. American Realty & Construction, Inc.*

(2002) 99 Cal.App.4th 1412, 1416; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Here, plaintiff has wholly failed to meet her burden as appellant. She is apparently unhappy that the trial court granted summary judgment, but her opening and reply briefs failed to identify any potential error or errors. Plaintiff has not provided adequate legal discussion of any potential grounds of error with applicable legal authority. Nor is there any citation to the record, other than to plaintiff's complaint. The complaint is not an adequate record. This court has not been provided with the moving, opposing and reply papers in connection with the summary judgment motion, nor the trial court's written order granting that motion nor any hearing transcript. We plainly lack a meaningful record from which to assess error. For all of these reasons, plaintiff has not met her burden on appeal. Consequently, her appeal fails as a matter of law.

Further, as pointed out by defendants, plaintiff's opening brief concedes that she did not timely file a government tort claim as required by law. (*Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1246; see Gov. Code, §§ 911.2, 945.4.) Plaintiff does not claim she filed in the trial court a timely motion for leave to present a late claim under Government Code section 946.6. But even if she had done so, no legally sufficient excuse is provided. Plaintiff merely states she was ignorant, which is not a sufficient basis for relief under that statute. (*Drummond v. County of Fresno* (1987) 193 Cal.App.3d 1406, 1412.)

DISPOSITION

The order granting summary judgment is affirmed. Each party shall bear their own costs on appeal.