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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

KAMAL HIRAMANEK,

Plaintiff and Respondent,

v.

RODA HIRAMANEK,

Defendant;

JAVAD MAJD,

Objector and Appellant.

H036717

(Santa Clara County

Super. Ct. No. CV142193)

Javad Majd appeals from an order directing him to pay monetary sanctions to plaintiff Kamal HiramaneK in the amount of \$1,340 for failing to comply with a discovery order.¹ We affirm the order.

¹ The matter is appealable. It is not appealable pursuant to Code of Civil Procedure section 904.1, subdivisions (a)(11) and (a)(12), because Majd is neither a party nor an attorney for a party and the amount in question is less than \$5,000. Nonetheless, the matter is appealable as “[f]rom a judgment,” pursuant to section 904.1, subdivision (a)(1), because the matter is final as to Majd, who is not a party and no longer has an interest in the remainder of the action. (See, e.g., *Person v. Farmers Ins. Group of Companies* (1997) 52 Cal.App.4th 813, 815 [a doctor nonparty witness appealed from an order requiring her to comply with a deposition subpoena and to pay sanctions]; *Brun v. Bailey* (1994) 27 Cal.App.4th 641, 648-651 [deposed doctor appealed the denial of a protective order seeking payment of an expert witness fee]; *Barton v. Ahmanson Developments, Inc.* (1993) 17 Cal.App.4th 1358 [plaintiff’s former attorney was sanctioned for discovery abuse, then discharged by the client, and appealed the order imposing sanctions].)

MAJD'S SHOWING ON APPEAL

Majd has strained the patience of this court with this frivolous appeal. He has filed a 51-page opening brief and a 33-page reply brief all toward complaining about an insignificant sanction awarded because of his undisputed failure to attend a court-ordered deposition. Not content with this, he has also submitted to us a request for judicial notice of a fee-waiver order that was already part of the record on appeal, a motion to augment the record with five exhibits that pertain to a motion to quash that was filed after his notice of appeal, and a motion to augment the record with 13 exhibits that are patently irrelevant to this appeal, such as Majd's complaints to the Commission on Judicial Performance about the trial court judge, Majd's complaints to the State Bar about plaintiff's attorney, and a trial court order from another case that was filed after Majd's notice of appeal in this case.

As to the substance of Majd's appeal, Majd presents a deficient, an unfocused, and a barely coherent discourse with argumentative and slanted facts aimed toward relitigating not only the underlying motion but also much collateral acrimony that stems from a missing \$120. His briefs are devoid of any analysis or discussion, supported by the record and pertinent authority, which discloses to us the course of logical or legal reasoning by which he urges us to conclude that the trial court committed reversible error. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [“[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's [contentions] as waived.”]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court “will not develop the appellants' arguments for them”]; Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by “argument and, if possible, by citation of authority”]; see also Eisenberg et al. *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2011) ¶ 9:21, p. 9-6 (rev. #1 2011) [“appellate court can treat as

waived or meritless any issue that, although raised in the briefs, is *not supported by pertinent or cognizable legal argument or proper citation of authority.*”].)

In short, we agree with plaintiff who asserts: “In wasting the resources of this Court, Majd fails to present any matter worthy of appeal.”

We acknowledge that Majd is representing himself on appeal. Under the law, one may act as his or her own attorney if he or she chooses. But when a litigant appears in propria persona, he or she is held to the same restrictive rules of procedure and evidence as an attorney--no different, no better, no worse. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.)

To her credit, plaintiff provides an intelligible background from which we can summarily review this case.

BACKGROUND

Plaintiff sued defendant Roda Hiramaneek (her ex-mother-in-law) for unlawful detainer. Defendant prevailed, and the trial court awarded defendant \$120 in costs. Plaintiff mailed a check for \$120 to defendant’s attorney. The attorney kept the money and did not satisfy the judgment. Defendant, then representing herself, obtained an order of examination (OEX) for plaintiff in an effort to collect the judgment. She filed a proof of service showing that Majd had personally served plaintiff with the OEX. Majd did not serve plaintiff, and plaintiff otherwise had no notice of the examination date. Plaintiff failed to appear for the examination, and the trial court issued a bench warrant for plaintiff’s arrest. When plaintiff found out about the warrant, she unsuccessfully sought to recall the warrant and pay defendant the judgment amount. She then secured a hearing date for a motion to set aside the warrant and OEX. For purposes of the motion, she served Majd with a deposition subpoena directing him to bring his telephone bills, credit card statements, and bank statements for a month-long period that surrounded the date that Majd had attested to serving plaintiff. After initially refusing to attend the

deposition, Majd appeared without counsel or the documents and with his friend, Adil Hiramaneek (defendant's son). Majd stated that the documents were irrelevant, and plaintiff suspended the deposition. Plaintiff filed a motion to compel asserting that she was not served with the OEX and seeking discovery sanctions of \$1,340. She explained that the documents would tend to show Majd's whereabouts on the date he attested serving plaintiff. At the hearing, Majd agreed to appear for a deposition and bring the documents. The parties agreed on a date, and the trial court ordered Majd to appear with the documents. An attorney purporting to represent Majd then wrote letters to plaintiff's attorney (1) making objections to producing the documents on the ground of privacy, (2) suggesting that Majd would seek a protective order and continuance of the deposition, (3) reporting that Majd had been hospitalized for three days because of heart problems, and (4) stating that Majd would be filing for a protective order and the deposition would not go forward as scheduled. Majd did not file any motion for a protective order or continuance and failed to appear for the deposition. Plaintiff then filed another motion to compel and for contempt seeking sanctions of \$2,130. At the hearing, the trial court ordered Majd's attorney to appear and, when the attorney appeared, he informed the trial court that he had never made a general appearance in the case for Majd. The trial court then ordered Majd to appear for the deposition and continued the hearing. Majd appeared at the deposition and produced the documents. At the continued hearing, the trial court considered Majd's opposition papers on the issue of sanctions. Majd claimed that he had been hospitalized for the court-ordered deposition. The trial court, however, pointed out that Majd had nowhere set forth that fact in his papers ("Nowhere in your documents did you ever claim that you couldn't go to that deposition, the one ordered by Judge Schneider because of your health"). It ordered sanctions of \$2,380. On its own motion, it held another hearing after receiving the above-mentioned letters mentioning Majd's predeposition hospitalization. Plaintiff pointed out that none of the letters asserted that Majd could not appear at the court-ordered deposition for health reasons. The trial court

then amended the sanctions amount to \$1,340, the amount that plaintiff had originally requested.

DISCUSSION

Discovery from nonparties is governed by Code of Civil Procedure section 2020.010 and is primarily carried out by way of subpoena.² “ ‘Misuses of the discovery process include, but are not limited to,’ ‘[d]isobeying a court order to provide discovery.’ ” (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434.)

Section 2023.030 provides for monetary sanctions based on misuse of the discovery process. It specifically states: “The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney’s fees, incurred by anyone as a result of that conduct. . . . If a monetary sanction is authorized by any provision of this title, the court *shall* impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (§ 2023.030, subd. (a), italics added.)

The burden of proving “substantial justification” or “unjust imposition” is on the party asserting such a defense. (*Doe v. United States Swimming, Inc., supra*, 200 Cal.App.4th at p. 1435.)

Our review of a trial court’s ruling on a discovery sanction is under the deferential abuse of discretion standard. (*Doe v. United States Swimming, Inc., supra*, 200 Cal.App.4th at p. 1435.) “Under this standard, a trial court’s ruling ‘will be sustained on review unless it falls outside the bounds of reason.’ [Citation.] We could therefore disagree with the trial court’s conclusion, but if the trial court’s conclusion was a reasonable exercise of its discretion, we are not free to substitute our discretion for that of the trial court.” (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881-882.)

² Further unspecified statutory references are to the Code of Civil Procedure.

Here, Majd failed to appear for a court-ordered deposition. Sanctions were therefore mandatory unless Majd carried his burden to prove “substantial justification” or “unjust imposition.” The trial court, however, rejected Majd’s evidence as unworthy of credence and concluded that Majd had failed to carry his burden of proof. There is no reargument on appeal after a failure of proof at trial where the issue to be proved involved evidentiary conflicts. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465-466.)

DISPOSITION

The order is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.