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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CORRETTA BAKER,
Plaintiff and Appellant,

v.

COLDWATER CREEK,
Defendant and Respondent.

H036815
(Monterey County
Super. Ct. No. M101254)

CORRETTA BAKER,
Plaintiff and Appellant,

v.

KATHLEEN TRAN,
Defendant and Respondent.

(Monterey County
Super. Ct. No. M101286)

Plaintiff Corretta Baker worked for defendant Coldwater Creek, a chain of women's clothing stores, as a sales associate in its Carmel store for approximately three and one-half years. On September 11, 2009, Baker filed an employment-related action against Coldwater Creek in propria persona¹ (hereafter Coldwater Creek Action). That

¹ Baker represented herself throughout the proceedings below and appears in propria persona on appeal.

same day, Baker filed a separate, limited civil action against Kathleen Tran, her former supervisor at Coldwater Creek (Monterey County Superior Court Case No. M101286; hereafter Tran Action). Baker continued to work for Coldwater Creek after she filed the complaints.

The trial court referred the Coldwater Creek Action to court-directed mediation. At mediation, Baker and Coldwater Creek signed a written settlement agreement to settle both actions for \$15,000. The settlement agreement provided that Coldwater Creek would pay Baker after it received signed requests for dismissal of both actions from her. But Baker refused to sign the requests for dismissal.

Coldwater Creek filed a motion pursuant to Code of Civil Procedure section 664.6² for entry of judgment pursuant to the terms of the settlement agreement. Baker opposed the motion, arguing that she did not agree to the settlement amount, that the amount was insufficient to settle her claims, that the agreement was obtained under false pretenses, that she did not understand the agreement, and that medication she was taking at the time of the mediation clouded her judgment. The trial court found that both parties actively participated in the mediation, that both parties signed the settlement agreement, and that there was inadequate evidence to support Baker's claims that she was confused or incapacitated when she signed the settlement agreement. The court granted Coldwater Creek's motion and entered judgments of dismissal in both actions. Baker appeals.³

² All further statutory references are to the Code of Civil Procedure.

³ Baker filed notices of appeal in both actions. The appeal of the Coldwater Creek Action was pending in this court and the appeal of the Tran Action was pending in the appellate division of the superior court. On July 19, 2012, on our own motion, we ordered the appeal in the Tran Action transferred to this court pursuant to California Rules of Court, rule 8.1002(3) to "secure uniformity of decision" and for reasons of judicial economy. (Cal. Rules of Court, rule 8.1002(3); see also Code Civ. Proc., § 911.) We also ordered that the two cases be considered together.

After concluding that substantial evidence supports the trial court's findings and order, we will affirm the judgments.

FACTUAL AND PROCEDURAL HISTORY

I. Pleadings

Baker's complaints describe a number of employment-related problems, but do not specify the number or the nature of the causes of action alleged against Coldwater Creek or Tran.

Baker alleged that in September 2008, then-store manager Tran,⁴ gave her a "bogus review," citing poor hygiene and grooming, tardiness, poor customer service, and failure to promote the store's products. Baker complained that her low reviews were based on matters that were not true, citing as an example Tran's false claim that Baker's "send sales" (when one store sends an item it has in stock to another store that does not have the item) were late. After proving Tran was mistaken, Baker complained it took the company nearly five months to clear her record. Baker accused Tran of enforcing company rules unfairly, in a manner that was "biased, and very racist." (Baker is African American.) Baker also complained about the low number of hours she was scheduled to work.

Baker alleged that Coldwater Creek required her to make bank deposits "off the clock," to sign the "deposit book" for dates she did not work, and that "Lead" workers were unprofessional and disrespectful toward her. She complained of an incident in which she had difficulty unlocking a storeroom because a key was mislabeled. Baker

Baker appeals from the order on the motion for entry of judgment. Such an order is not appealable. We construe the notices of appeal as being from the subsequently entered judgments. (*Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 391, fn. 1 (*Dominguez*.)

⁴ It appears Tran was terminated before Baker filed her complaints.

met with human resources manager Libby Feyh and the district manager several times. During those meetings, Baker complained of boxes “stacked unrealistically high” creating a safety hazard, and about the bank deposit incident, a “dirty joke” a manager had made, and other issues.

In the “Prayer for Relief,” Baker asks to have her “record expunged of [Tran’s] proven negligence” and to be compensated for work done off the clock and “hours taken away,” as well as her pain and suffering.

Coldwater Creek and Tran, represented by the same attorney, answered the complaints with general denials and asserted a number of affirmative defenses. Coldwater Creek asserted that Baker had “waived and released” any wage-related claims “as part of a class action settlement in which she participated.”

II. Mediation & Settlement Agreement

In January 2010, the court referred the Coldwater Creek Action to court-directed mediation. The parties appeared for the mediation on June 2, 2010, with Baker representing herself. Libby Feyh appeared on behalf of Coldwater Creek, which was represented by attorney Eric Meckley. Tran did not appear at the mediation. The mediation lasted three and one-half hours.

Coldwater Creek initially offered to settle for \$2,000. After several “back-and-forth settlement offers and demands,” the parties settled both actions for \$15,000. The settlement agreement called for Baker to resign from Coldwater Creek immediately. At the end of the mediation, Baker and Feyh signed a “Separation and General Release Agreement” (Agreement), setting forth the terms of the settlement. The Agreement required Baker to execute requests for dismissal with prejudice “as a condition precedent to [Coldwater Creek] delivering the settlement checks.” Coldwater Creek agreed not to file the requests for dismissal “until the settlement checks have been delivered to Baker.”

After Baker reviewed the Agreement with the mediator, she inquired about her personnel file. Thereafter, the parties added the following hand-written provision to the Agreement: “Baker’s entire personnel/employment file shall be sent from the store to the corporate office and stored in a sealed envelope marked ‘Personal & Confidential.’ ” Baker and Feyh initialed the addendum. Baker also signed a memorandum addressed to Coldwater Creek and Feyh in which she resigned from her job “effective immediately.”

III. Post-Mediation Filings & Dismissal Hearing

On June 3, 2010, counsel for Coldwater Creek prepared request for dismissal forms for both actions and mailed them to Baker.

On June 4, 2010, Baker filed a 10-page document in the Coldwater Creek Action “Requesting an Amendment to Existing Case,” in which she alleged the store had retaliated after receiving notice of her lawsuit. Baker complained about various actions taken by the assistant store manager after her litigation was filed and repeated some of the allegations in her initial complaints.

The court scheduled the Coldwater Creek Action for a “Receipt of Dismissal Hearing” on August 6, 2010. Coldwater Creek filed a “status statement,” informing the court that both actions had settled but that Baker had not responded to defense counsel’s letters and voicemail messages about the requests for dismissal.

On July 27, 2010, Baker filed a request to amend the “Proposed Settlement Due to the Influence of Being Under Medication,” which stated: “After several hours that were a basic waste of time, the Defendant and [mediator] came to an agreement that I would receive \$15,000. I have a vague memory of this but I do not agree to this. This is not enough to close **two** cases” Baker refused to sign the papers and alleged the “agreement was obtain[ed] under false pretenses” because the mediator was not fully informed about her medical conditions and Baker’s “memory, attention span, and judgment were clouded due to the medication [she] was on.” She complained that she

was not able to “properly convey [her] feelings” and emotions at the mediation because the mediator had placed her in a separate room from Feyh and Meckley. Baker claimed she did not understand the agreement, did not sign of her own free will, and “was under powerful drugs that were influencing [her] mind.” She also argued that she would not have resigned immediately, and that she should not “have to give up [her] job for justice.”

At the August 6, 2010 dismissal hearing, the court continued both matters to the case management calendar.

IV. Motion for Entry of Judgment

Coldwater Creek filed a motion for entry of judgment in accordance with the terms of the settlement agreement (§ 664.6), which was scheduled for hearing on November 19, 2010. Coldwater Creek argued there was no evidence to support Baker’s assertion that medication clouded her memory, attention span, and judgment during the mediation. It noted the absence of a declaration with information regarding the name or dosage of the medication and its effects. Coldwater Creek argued that Baker failed to raise this concern during the mediation, and that her allegations were “contradicted by her quite attentive and demanding conduct at the mediation, in which she successfully negotiated a higher settlement amount than . . . initially offered and insisted upon the inclusion of specific terms” regarding her personnel file.

Documents in support of the motion included the declaration of Eric Meckley, in which he described waiting a “very long time” after they put the settlement in writing while Baker reviewed the Agreement with the mediator. Among other things, Meckley declared that after the Agreement was signed, the mediator told him Baker wanted to lecture him and Feyh about what Baker thought was wrong at the company. They declined, stating that it would lead to confrontation and would not be productive.

Baker did not file written opposition to the motion to enforce the Agreement. On the day of the hearing, Baker called the court, told the clerk she could not appear because she was in the hospital with chest pains, and requested a continuance. The court continued the hearing to December 17, 2010, and ordered that no further papers would be allowed.

The day before the December 17th hearing, Baker filed a paper entitled “Truthful Corrections to Declaration of Eric Meckley” in which she challenged Meckley’s ability to assess her demeanor and mental state. She argued that \$15,000 was Coldwater Creek’s offer, not her demand, and that after the mediator “breezed through” the documents, Baker was “mentally numb and emotionally drained” and could not ask questions. Baker denied asking to lecture Meckley and Feyh about the company and to have her personnel file sealed rather than destroyed.

Baker filed a second document describing “sleepless nights, chest pains, and bouts of depression” she suffered since the mediation, and noting that she had been hospitalized twice and had not found another job.

At the hearing on the motion, Baker told the court that she participated in the mediation and signed the Agreement, but did not understand what she was doing because of her medication. Baker asked for and was granted permission to submit additional papers; the court continued the hearing to January 21, 2011.

On January 7, 2011, Baker filed a declaration naming eight medications she had taken “since last year,” and offering, “My prescription and medical history can be provided at any given time.” She also made further arguments opposing the motion.

At the January 21, 2011 hearing, Baker told the court that she had nothing more to add. The court found that both parties actively participated in the mediation, that both parties signed the Agreement, and that there was inadequate evidence to support Baker’s claims that she was confused or incapacitated when she signed the Agreement. Based on those findings, the court granted the motion.

DISCUSSION

Baker's opening brief on appeal consists primarily of 20 paragraphs in which she challenges factual statements in Meckley's declaration and in the points and authorities in support of the motion to enforce the settlement agreement. Baker's brief does not discuss the standard of review or contain any citations to legal authority. It appears Baker expects this court to review the evidence and arguments anew and make factual findings contrary to those made by the trial court. That is not our role here.

Coldwater Creek and Tran argue that there was no evidence of Baker not understanding the Agreement due to the effects of medication, and that substantial evidence supports the trial court's finding that the Agreement was valid and enforceable. They also urge that Baker's brief be stricken for failure to cite to the appellate record.

I. Failure to Cite to the Record on Appeal

One of the most fundamental rules of appellate review is that an appealed judgment or order is presumed to be correct. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

The appellant (Baker in this case) has the burden of overcoming the presumption of correctness. To do so, the appellant must provide the court with an adequate record that demonstrates what the trial court did and the alleged error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

In addition, any statement in a brief concerning matters that are in the appellate record, whether factual or procedural, whether in the statement of facts, the procedural history, or the argument portion of the brief, must be supported by a citation to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 745 (*Myers*); *City of Lincoln v. Barringer* (2002) 102

Cal.App.4th 1211, 1239 (*Barringer*) [record citations in statement of facts do not cure failure to include record citations in argument portion of brief.] This requirement allows the reviewing court to locate relevant portions of the record expeditiously. (*Myers, supra*, at p. 745.)

Coldwater Creek and Tran argue that Baker's opening brief should be stricken because it contains "absolutely no citations to the record" In fact, Baker made some effort to cite the record. Baker's opening brief contains several quotes from Coldwater Creek's points and authorities or from Meckley's declaration. Each quote is followed by a citation to the original page and line number in those documents, rather than the page numbers assigned in the clerk's transcript. However, Baker often neglects to identify which document she is referring to. While the citation format Baker used provides this court with some information, it remains difficult to find the material cited. (See e.g., *Bernard v. Hartford Fire Ins. Co* (1991) 226 Cal.App.3d 1203, 1205.) And although Baker occasionally cites the record, the vast majority of statements in her brief are not accompanied by any citation.

When the appellant's opening brief fails to refer to the record in connection with the points raised on appeal, the appellate court may treat those points as having been waived. (*Barringer, supra*, 102 Cal.App.4th at p. 1239; see also *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799-801 [several contentions on appeal waived because the appellant failed to provide record citations demonstrating that he had raised those issues in the trial court].) The appellate court may also ignore unsupported contentions (*Dominguez, supra*, 183 Cal.App.4th at p. 392, fn. 2; *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1024-1025 (*Stockinger*)) or strike portions of the brief entirely (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391). But the court also has the discretion to disregard a failure to cite to the record. (Cal. Rules of Court, rule 8.204 (e)(2)(C); *Stockinger, supra*, 111 Cal.App.4th at pp. 1024-1025.) Since the record here is not very large

(approximately 190 pages) and Baker made some effort to cite to the record, we elect not to strike any part of Baker's brief.

II. References to Matters Outside the Record

Appellate courts cannot consider documents or factual matters that were not presented to the trial court or that are not part of the record on appeal. Moreover, the parties should not refer to such matters in their briefs. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 (*Pulver*); Cal. Rules of Court, rule 8.204(a)(2)(C).) The appellate court will disregard statements in the briefs that are based on such improper matter. (Cal. Rules of Court, rule 8.204(e); *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625; *Pulver, supra*, at p. 632.)

Baker's brief refers to two matters that are not in the record. First, regarding the incident involving the "send sales," Baker refers to a memorandum from Coldwater Creek dated January 15, 2009, which is attached to her brief as Exhibit 1. Second, regarding her medical condition, Baker refers to two billing statements from a hospital summarizing medical bills she incurred months after she signed the Agreement. We have reviewed the record carefully. These documents were never presented to the trial court and are not part of the record on appeal. We shall therefore disregard them and any statements based on them because they relate to matters outside the record.

During record preparation, Baker designated 110 exhibits (photographs, schedules, medical bills, and other documents) as part of the record on appeal. Although the papers Baker filed below mentioned such exhibits, she did not attach them to her filings or take any steps to place those exhibits in evidence. As the exhibits were not before the trial court, we will not consider them on appeal.

III. Principles Governing Motions for Entry of Judgment Under Section 664.6

Section 664.6 provides as follows: “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

The Second District Court of Appeal, Division Two, has succinctly described the nature of motions brought pursuant to section 664.6: “Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. [Citations.] . . . Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809-810; see also *Critzer v. Enos* (2010) 187 Cal.App.4th 1242 [trial court erred in granting § 664.6 motion where record demonstrated that two of five settling parties did not personally agree to settlement on the record].)

IV. Standard of Review

The trial court’s factual findings on a motion to enforce a settlement under section 664.6 “are subject to limited appellate review and will not be disturbed if supported by substantial evidence.” (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.) On the other hand, where the principal claim of error raises a question of law concerning the construction and application of section 664.6, the trial court’s decision is not entitled to

deference and will be subject to independent review on appeal. (*Ibid.*; *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1116, fn. omitted.) Baker’s appeal challenges the sufficiency of the evidence to support the trial court’s findings and order; it does not raise any legal issues that require us to interpret section 664.6. We therefore review the judgments for substantial evidence.

Under that standard of review, the appellate court considers “all of the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference from the evidence tending to establish the correctness of the trial court’s decision, and resolving conflicts in support of the trial court’s decision.” (*Estate of Beard* (1999) 71 Cal.App.4th 753, 778-779.) “When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination.” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, original emphasis omitted.) As long as there is substantial evidence, the appellate court must affirm, even if the reviewing justices personally would have ruled differently if they had presided over the proceedings below and even if other substantial evidence would have support a different result. (*Id.* at p. 874.)

V. Analysis

As noted, Baker’s brief consists primarily of 20 paragraphs in which she makes the same factual arguments she made in the trial court. Trial courts consider the facts and evidence and make factual findings. On appeal, we do not reweigh the evidence or reassess witness credibility. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 791; *Marriage of Bower* (2002) 96 Cal.App.4th 893, 897 [“appellant asks us to reweigh the evidence and substitute our discretion for that of the trial court. [T]hese are not legitimate functions of the Court of Appeal”].) An appeal does not give

the losing party a “second bite at the apple”; Baker cannot retry her case on appeal, or seek to persuade this court that she told the truth while her opponent did not. (See *Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531 [“ ‘Court of Appeal is not a second trier of fact’ ”]; *FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1276.)

Reviewing the entire record, we find substantial evidence to support the trial court’s order on the motion for entry of judgment. In support of the motion, Meckley submitted a declaration under penalty of perjury in which he stated that he personally attended the mediation, which lasted more than three hours.⁵ Meckley’s declaration stated, “The Parties made multiple back-and-forth settlement offers and demands. [Baker] successfully negotiated a monetary settlement amount that was significantly higher than Defendant’s initial offer [of \$2,000] [Baker] negotiated and was able to get Defendant to agree to . . . \$15,000.” Meckley declared that after they agreed to the material terms of the settlement, and put those terms in writing, Baker “had as much time as she wanted to review the Settlement Agreement and ask questions.” Meckley recalled waiting “a very long time” while Baker reviewed the Agreement with the mediator. After Baker reviewed the written Agreement, the parties negotiated the additional term regarding her personnel file, which Meckley hand-wrote on the Agreement, and the parties signed. After the Agreement was signed, the mediator, who had been meeting with the parties separately, told Meckley that Baker wanted to “lecture” him and Feyh about problems at Coldwater Creek; Meckley and Feyh declined, based on their concern that such a discussion would lead to confrontation and would not be productive.

⁵ In Coldwater Creek’s points and authorities, Meckley stated that the mediation lasted “almost a full day.” In his declaration, he told the court that the parties had reserved three hours for the mediation, but that the mediation continued beyond that time because the parties “were making progress toward a settlement.” The mediator filed a statement with the court, which indicated that the mediation lasted three and one-half hours.

Meckley also declared that “[a]t no point prior to or during the mediation did [Baker] claim to be ‘confused’ or under the influence of medication. Rather, [she] appeared to . . . be actively involved and engaged in the mediation: she participated in multiple communications with the mediator over a period of hours, she negotiated a higher settlement amount, and she insisted on the inclusion of her own material terms of the Agreement. We met . . . at the start of the mediation and introduced ourselves and [Baker] seemed perfectly lucid and fine.” At the end of the day, Baker “did not express any concerns or raise any issues about having signed the . . . Agreement.” Meckley never heard her say that she was confused or that she did not understand the terms of the Agreement. At the second hearing on the motion, Baker herself told the court that she had participated in the mediation and signed the Agreement. All of this evidence is sufficient to support the trial court’s findings.

Since Baker was challenging the Agreement, she had the burden of proving it was invalid or unenforceable. Although Baker argued that her memory and judgment were clouded due to the medication she was taking, she provided little evidence to corroborate the assertion. Only two of the five papers she filed with the court after signing the Agreement were verified under penalty of perjury. Those verified pleadings stated generally that Baker was on medication, but did not present information to the trial court about any particular medications she took on the day of the mediation nor any evidence that those drugs could impair one’s ability to enter into a settlement.

The time and place for Baker to prove her claims was in the trial court. The trial court gave Baker ample opportunity to prove her claim, excusing her initial failure to file any opposition to the motion, and continuing the hearing twice to allow her to submit evidence.

For these reasons, we conclude that substantial evidence supports the trial court’s findings that Baker actively participated in the mediation, which produced the

Agreement, and that there was inadequate evidence of confusion or incapacitation to make the Agreement unenforceable.

DISPOSITION

The judgment is affirmed.

GROVER, J.*

WE CONCUR:

RUSHING, P.J.

ELIA, J.

*Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.