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

CHAOWALIT KOOPONGSKUL,

Plaintiff and Appellant,

v.

TONY DINH et al.,

Defendants and Respondents.

H037103

(Santa Clara County

Super. Ct. No. CV185688)

Appellant appeals from judgment of dismissal without prejudice entered by the trial court after it sustained a demurrer with leave to amend, but appellant failed to file an amended complaint. Because an order dismissing a complaint without prejudice is not an appealable order, we will dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of the underlying action are neither available to us in the scant record before us, nor relevant to the disposition of this appeal. The procedural background, to the extent we can ascertain, is as follows. After the appellant filed a complaint in the trial court, the trial court sustained a demurrer with leave to amend.¹ The appellant failed to file an amended complaint, so the defendant moved for dismissal of the action with

¹ We take judicial notice of these fact from the Santa Clara County Register of Actions.

prejudice pursuant to California Code of Civil Procedure section 581, subdivision (f)(2).² After a hearing, for reasons not apparent in the record, the trial court dismissed the case *without* prejudice. Thereafter, appellant filed a document containing the caption for the underlying matter along with a case number which stated nothing more than, “Plaintiff would like to appeal the case.”

This Court lodged the appeal, and thereafter appellant filed a “Civil Case Information Statement” (Judicial Council of California, Form APP-004) indicating that he was appealing an order dismissing his complaint *with* prejudice. On appeal, appellant elected to proceed without a reporter’s transcript and designated the order of dismissal as the only record to be included in the clerk’s transcript. While the appeal was pending, appellant moved to augment the record with documents which were not part of the record below. His motion was denied. Appellant filed an opening brief consisting of one typed page, with five additional documents attached. None of these documents appear to be part of the record from the action below either.

DISCUSSION

The Order on Appeal is Not Appealable.

It is well settled that the right to appeal is wholly statutory. Section 904.1 enumerates the matters from which an appeal may be taken to this court. Respondents contend that an order dismissing an action without prejudice is not listed in that section, and is, therefore, not appealable. We agree.

Section 904.1, subdivision (a)(1) provides that an appeal may be taken from a judgment. While an order sustaining a demurrer is not appealable, an order dismissing

² California Code of Civil Procedure section 581, subdivision (f)(2) states in relevant part, “(f) The court may dismiss the complaint as to that defendant when: [¶] . . . [¶] (2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal. (Code of Civ. Proc., § 581, subd. (f)(2).)”

Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

the case after a demurrer is sustained can be appealable as a final judgment, because section 581d provides that an order of dismissal constitutes a judgment for all purposes. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 528, fn.1; *D'Hondt v. Regents of University of California* (1984) 153 Cal.App.3d 723, 726, fn. 2; *Meyers v. Home Sav. & Loan Assn.* (1974) 38 Cal.App.3d 544, 546 [order of dismissal following failure to amend after demurrer sustained with 10 days leave to amend “constitutes a judgment and is appealable”].) Here, the trial court sustained a demurrer with leave to amend, and when appellant failed to file an amended complaint, respondent moved to dismiss the action. Although the trial court was well within its authority to dismiss the action with prejudice under section 581, subdivision (f)(2), it instead elected to dismiss *without* prejudice.³ (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 330.)

A dismissal without prejudice is not a final judgment. When an order allows further proceedings between the parties in the trial court, it is not a final adjudication. “A dismissal ‘without prejudice’ necessarily means without prejudice to the filing of a new action on the same allegations, so long as it is done within the period of the appropriate statute of limitations. [Citations.]” (*Eaton Hydraulics Inc. v. Continental Casualty Co.* (2005) 132 Cal.App.4th 966, 974-975, fn. 6.) Here, the trial court dismissed the case without prejudice so appellant was free to re-file his action at any time as long as he filed it within the requisite statutory period. Accordingly, there was no final adjudication of the action. Had the trial court dismissed the case with prejudice, as respondent had requested, the order would be appealable as a final judgment. As it stands now, however, there is no judgment from which an appeal can be taken.

³ We note that we are not able to determine why the court elected to dismiss without prejudice because appellant has not provided a transcript of the hearing on the motion to dismiss.

The Appellant has Failed to Sustain His Burden on Appeal

Even if the order dismissing the appeal without prejudice were appealable, appellant has failed to sustain his burden on appeal. On appeal, it is the appellant's responsibility to affirmatively demonstrate error by citation to the record and to legal authority. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116, disapproved on other grounds in *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 9974, 979.) To this end, the record appellant provides must be such sufficient to allow this court "to pass upon the questions sought to be raised [citation]." (*People v. Apalatequi* (1978) 82 Cal.App.3d 970, 973.) Appellant has failed on both grounds.

The record provided includes only the order dismissing the action without prejudice. Among the relevant documents missing from the clerk's transcript are the operative complaint, respondents' demurrer, and any opposition thereto, the order sustaining the demurrer, the motion to dismiss which resulted in the order on appeal here, and any opposition thereto. Also, appellant elected to proceed without the reporter's transcript of the oral proceedings, leaving this court unable to ascertain the trial court's reasoning in dismissing the matter without prejudice.

Appellant's one page brief is equally woefully lacking. Not only does his brief fail to comply with the procedural requirements of the rules of court, it fails to raise any cognizable issue or argument and to support such issues raised with argument and citation to supporting facts and law. (Cal. Rules of Court, rule 8.204(a)(1)(A)(B) & (C).) Even more fundamentally, appellant has failed to "[s]tate the nature of the action [and] the relief sought in the trial court," or "explain why the order appealed from is appealable," or "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2).)

Although the court appreciates the effort involved in appellant representing himself in these proceedings, self-representation does not exempt a litigant from the requirements of the law. "A litigant has a right to act as his own attorney [citation] 'but,

in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded.’ [Citations.]” (*Lombardi v. Citizens Nat. Trust etc. Bank* (1955) 137 Cal.App.2d 206, 208-209.) A self-representing party is due the same consideration as any other party from trial and appellate courts, but no greater. (*Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160; *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1056.) Courts are not obliged to act as counsel for the self-representing party, though we should guard against inadvertence causing a miscarriage of justice. (*Lombardi v. Citizens Nat. Trust etc. Bank, supra*, 137 Cal.App.2d at pp. 209-211; *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1008; *Harding v. Collazo, supra*, 177 Cal.App.3d at p. 1055.) Having failed to provide this Court with a complete record on appeal, citations to the record or authority, and any meaningful argument in his opening brief, this court is not obligated to independently consider—or even attempt to ascertain—appellant’s claims.

Because appellant has failed to provide this court with the tools necessary and required to conduct a meaningful review of the order on appeal, he is not entitled to any relief from this court.

DISPOSITION

The appeal is dismissed as taken from a non-appealable order.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

MÁRQUEZ, J.