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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

GINA M. CAMPANALE,

Plaintiff and Appellant,

v.

REGIONAL MEDICAL CENTER OF  
SAN JOSE et al.,

Defendants and Respondents.

H037179

(Santa Clara County  
Super. Ct. No. CV115699)

GINA M. CAMPANALE,

Plaintiff and Appellant,

v.

CONWAY LIEN,

Defendant and Respondent.

H037235

(Santa Clara County  
Super. Ct. No. CV 115699)

GINA CAMPANALE,

Plaintiff and Appellant,

v.

JOHN R. SARANTO et al.,

Defendants and Respondents.

H037517

(Santa Clara County  
Super. Ct. No. CV115699)

## **INTRODUCTION**

Appellant Gina M. Campanale sued respondent Regional Medical Center of San Jose and its staff in propria persona for claims arising from the medical treatment and care of her injuries. The trial court entered summary judgments in favor of respondents Regional Medical Center of San Jose, Traci Caldwell, Nash Solano, Judith Shiner, Dr. Bruce Huffer, and Dr. Conway Lien.<sup>1</sup> Additionally, the court entered judgment in favor of respondent Dr. John Saranto, following a jury trial. Appellant challenges these judgments and orders by way of three separate appeals which we ordered considered together. For the reasons stated below, we will dismiss portions of the appeals and affirm the judgments entered below.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On July 20, 2007, appellant was injured in a motorcycle accident and was flown by helicopter to Regional Medical Center of San Jose.

The attending trauma room physician, respondent Dr. Saranto, took several x-rays and diagnosed appellant with multiple pelvic fractures, abrasions, a left thigh contusion, and a tender and swollen left knee. Appellant claimed that when she was treated by Dr. Saranto, he asked her if she had medical insurance. When she informed him that she did not have insurance, he purportedly “introduced a conspiracy to refuse to provide . . . the standard level of treatment and care.” She further alleged that Dr. Saranto and members of his staff asked her if she was an organ donor and that they engaged in acts, which made her believe they wanted to harvest her organs.

Appellant also complained of pain in her right hand. On July 22, 2007, respondent Dr. Lien, a radiologist, examined x-rays of her right hand. Although she was later

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<sup>1</sup> Dr. Lien’s name has frequently been misspelled as “Dr. Lein” in the record and appellant’s briefs.

diagnosed with a fracture, the fracture was partially obscured by the IV line in the x-ray. Dr. Lien apparently missed the fracture and did not diagnose it on that day. Appellant alleged that Dr. Lien knew of the fracture and conspired with Dr. Saranto to refuse treatment to her right hand. She based this allegation on a conversation she overheard where “defendant Conway Lein [*sic*] ask[ed] defendant John R. Saranto if he was going to provide medical treatment. [Saranto’s] response was, ‘no.’ ”

Respondent Dr. Huffer, an orthopedic surgeon, also examined appellant and recommended surgical stabilization of the pelvic fractures. Appellant, however, refused surgery. According to appellant, Dr. Huffer became angry when she refused surgery, and he ordered Dr. Saranto to prematurely discharge her from the hospital.

After the doctors discharged appellant, respondent Traci Caldwell, a physical therapist, met with appellant to teach her how to transfer from the bed to a wheelchair. Appellant alleged that Caldwell treated her in a rude, demanding, and “sadistic” manner. Caldwell purportedly used excessive force to pull appellant into a sitting position on the bed and then refused to assist her into a wheelchair. During the transfer from the bed to the wheelchair, appellant was allegedly forced to use her injured right hand to support her weight. Her hand “collapsed to her elbow” and her lower body fell to the floor. According to appellant, Caldwell did not report the incident in the medical records. Additionally, appellant claimed that Caldwell created a false progress reports, in which Caldwell misrepresented appellant’s condition, ability, and character.

After the physicians ordered appellant’s discharge, a hospital case management worker met with her to discuss discharge options. Appellant did not have a permanent residence, and she did not have medical insurance or financial resources to pay for her care. Respondent Judith Shiner was one of the social workers who met with appellant. On the medical chart, Shiner wrote “M.I.A” and noted that appellant had no prior connection to MediCal. Appellant claimed that “M.I.A” meant “missing in action or

presumed dead.” She also claimed that Shiner provided misleading information that prevented her from receiving MediCal.

Respondent Nash Solano was another social worker who spoke to appellant about her discharge plans. Appellant claimed that Solano refused to assist her in obtaining MediCal, in finding a way to pay for her medical bills, and in finding a skilled nursing facility. She alleged that Solano harassed her by repeatedly asking how she was going to pay for her medical bills.

On June 24, 2008, appellant filed a complaint against Regional Medical Center of San Jose and its staff alleging multiple claims arising from the medical treatment she received for her injuries. After several rounds of demurrers and motions to strike, appellant filed her third amended complaint on May 21, 2009. In her Third Amended Complaint, appellant alleged causes of action for: (1) professional negligence against Dr. Saranto, Dr. Lien, Dr. Huffer, Caldwell, Solano, Shiner, and the Regional Medical Center of San Jose; (2) intentional infliction of emotional distress against Dr. Saranto, Dr. Lien, Dr. Huffer, Caldwell, Solano, Shiner, and the Regional Medical Center of San Jose; (3) professional fraudulent misrepresentation against Dr. Saranto, Dr. Huffer, Caldwell, Solano, Shiner, and the Regional Medical Center of San Jose; (4) unprofessional conduct against Dr. Saranto, Dr. Huffer, Caldwell, Solano, Shiner, and the Regional Medical Center of San Jose; and (5) intentional tort against Dr. Lien, Dr. Huffer, and Caldwell. Appellant requested general, special, and punitive damages for all causes of action.

Subsequently, all the defendants filed motions to strike the prayer for punitive damages. Additionally, Dr. Saranto, Dr. Huffer, Caldwell, Solano, Shiner, and the Regional Medical Center of San Jose filed demurrers to the professional fraudulent misrepresentation cause of action. On August 18, 2009, the trial court held a hearing on the motions to strike and the demurrers. The court ordered the prayer for punitive

damages stricken from the complaint, and it sustained the demurrers to the professional fraudulent misrepresentation cause of action without leave to amend.

Doctors Huffer and Lien both filed motions for summary judgment or, in the alternative, for summary adjudication. As to both defendants, the trial court granted summary adjudication as to the professional negligence cause of action, finding no triable issue of material fact existed regarding the standard of care. However, the court denied the motions as to the intentional tort, intentional infliction of emotional distress, and unprofessional conduct causes of action. The orders granting Dr. Lien and Dr. Huffer's motions for summary adjudication were filed on February 2, 2011.

The Regional Medical Center of San Jose, Caldwell, Solano, and Shiner (collectively "RMC") also moved for summary judgment or summary adjudication in the alternative. They argued that no triable issue of material fact existed as to any of the alleged causes of action. On May 13, 2011, the trial court granted the motion for summary judgment, finding that there were no triable issues of material fact as to the standard of care. On May 31, 2011, appellant moved for reconsideration of the trial court's order granting summary judgment on the ground that the court failed to properly consider the some of the evidence she had presented. RMC opposed this motion on the ground that appellant failed to present any new or different facts, circumstances, or law. The trial court denied the motion, and entered judgment on June 21, 2011.

On July 26, 2011, appellant filed appeal number H037179, stating that she was challenging the "Motion [for] Reconsideration on Judgment notwithstanding the Verdict heard July 21, 2011 for the . . . [p]ortion of the Order entered in on February 2[, 2011], for the Summary Judgment of defendant Bruce Huffer M.D. for Negligence heard on January 6<sup>th</sup>," "[p]ortion of the Order entered in on February [2, 2011], for the Summary Judgment of Conway Lein [*sic*] for Negligence," and the "Motion [for] Reconsideration on Judgment notwithstanding the Verdict heard July 21, 2011 for the . . . [e]ntire [o]rder

entered in on May 13, 2011<sup>2</sup> for the Summary Judgment of Regional Medical Center of San Jose, Traci Caldwell P.T., Nash Solano and Judith Shiner . . . .”

On May 9, 2011, Dr. Lien once again moved for summary judgment as to the remaining intentional tort and intentional infliction of emotional distress causes of action. Dr. Lien argued that no triable issues of material fact existed as to his agreement to participate in a conspiracy or as to whether he engaged in an extreme or outrageous conduct directed at appellant. On August 9, 2011, the trial court granted the motion for summary judgment. Appellant filed appeal number H037235 the same day. Thereafter, the trial court entered judgment in favor of Dr. Lien on September 14, 2011.<sup>3</sup>

Meanwhile, Dr. Huffer filed a motion for reconsideration of the August 5, 2011 order denying summary judgment as to the unprofessional conduct, intentional tort, and intentional infliction of emotional distress causes of action. He also moved for summary judgment for a second time. On September 13, 2011, the court entered an order granting Dr. Huffer’s motion for reconsideration and summary judgment. The court found that there was evidence establishing that Dr. Huffer met the standard of care and thus, there were no triable issues of material fact as to the remaining causes of action. A notice of entry of the order granting the motion to reconsider and the order granting motion for summary judgment was served on September 19, 2011.

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<sup>2</sup> Judgment on the May 13, 2011 order granting summary judgment was entered on June 21, 2011. On the court’s own motion, we deem the appeal to be taken from this judgment.

<sup>3</sup> We note that appellant’s notice of appeal was premature as it was filed on August 9, 2011 before the trial court entered judgment on September 14, 2011. On our own motion, we will we deem the notice of appeal to have been taken as of the date of entry of judgment on September 14, 2011. (Cal. Rules of Court, rule 8.104(e).)

On August 23, 2011, the matter went to jury trial against the only remaining defendant, Dr. Saranto. On September 14, 2011, the jury found in favor of Dr. Saranto, and the trial court entered judgment in his favor.

On October 27, 2011, appellant filed appeal number H037517, appealing the “[j]udgment after an order granting a summary judgment motion” entered on September 13, 2011.

All of appellant’s claims in the Third Amended Complaint have now been adjudicated. Appellant has filed three appeals (i.e., appeals H037179, H037235, and H037517) that are pending before this court.<sup>4</sup>

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<sup>4</sup> Because of the multitude of defendants, orders, judgments and appeals involved, we provide the following summary for purposes of clarity.

**Appeal number H037179** - This appeal, filed July 26, 2011, purportedly challenges:

- 1) the trial court’s July 21, 2011 Order denying appellant’s Motion to Reconsider Judgment Notwithstanding the Verdict (*appeal dismissed herein*),
- 2) the February 2, 2011 Order denying appellant’s Motion granting Defendant Conway Lien, M.D.’s Motion for Summary Adjudication (*appeal dismissed by order of this court on October 18, 2011*),
- 3) the February 2, 2011 Order granting Defendant Bruce Huffer M.D.’s Motion for Summary Adjudication (*motion to dismiss appeal granted herein*), and
- 4) the June 21, 2011 Judgment entered after the May 13, 2011 Order re: Motion for Summary Judgment/Adjudication as to the RMC defendants (*judgment affirmed herein*).

**Appeal number H037235** – This appeal, filed August 9, 2011, challenges the September 14, 2011 judgment entered after respondent Dr. Lien’s Motion for Summary Judgment was granted (*judgment affirmed herein*).

**Appeal number H037517** – This appeal, filed October 27, 2011, challenges

- 1) the September 13, 2011 judgment entered after respondent Dr. Huffer’s Motion for Summary Judgment was granted, (*motion to dismiss appeal granted herein*), and
- 2) the September 14, 2011 judgment entered after a jury verdict in favor of respondent Dr. Saranto (*motion to dismiss appeal granted herein*).

While the appeals were pending, Dr. Lien filed a motion to dismiss appeal H037179 from the order granting summary adjudication as to the professional negligence cause of action. On October 18, 2011, we granted Dr. Lien's motion and dismissed the appeal as taken from a nonappealable order. On December 5, 2011, Dr. Huffer filed a motion to dismiss appeal H037179 from the order granting summary adjudication of the professional negligence cause of action. By order dated June 25, 2013, we ordered that motion considered with the instant appeals.

On June 25, 2013, this court ordered the appeals H037179, H038235, and H037517 considered together for oral argument and disposition.

## **DISCUSSION**

### ***A. Appellant's Burden on Appeal***

The rules of appellate procedure can sometimes evade even those who have trained for years to be lawyers. Even though appellant is litigating these appeals in propria persona, a self-represented litigant is not exempt 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 (*Lombardi*)). 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 (*Harding*)). 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, supra*, 137 Cal.App.2d at pp. 209-211; *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1008; *Harding, supra*, 177 Cal.App.3d at p. 1055.) Thus, if an appellant fails to provide this court with a notice of appeal clearly identifying an appealable order, a proper

record, citations to the record, or citations to authority, we are not obligated to consider the merits of the appellant's claims independently.

### **1. Appellant's Notice of Appeal in H037179**

In the notice of appeal, appellant identifies the order she wishes to appeal as “the denial of Motion [for] Reconsideration on Judgment notwithstanding the Verdict heard July 21, 2011 for the . . . [p]ortion of the Order entered in on February [2, 2011], for the Summary Judgment of defendant Bruce Huffer M.D. for Negligence heard on January 6th . . . [and the] . . . [e]ntire [o]rder entered in on May 13, 2011 for the Summary Judgment of Regional Medical Center of San Jose, Traci Caldwell P.T., Nash Solano and Judith Shiner . . . .” The civil case information sheet (CCIS) indicates that she is appealing a “[j]udgment after an order granting a summary judgment motion.” She also attached to the CCIS a copy of the February 2, 2011 order granting Dr. Huffer's summary adjudication and a copy of the May 13, 2011 order granting the RMC defendants' summary judgment.

Appellant's notice of appeal is difficult to decipher. We are uncertain whether she wishes to appeal the order denying the motion for reconsideration of the order granting RMC's summary judgment, the post-judgment order denying the judgment notwithstanding the verdict entered July 21, 2011, the February order granting summary adjudication, and/or the May order granting summary judgment. Because it is the notice of appeal that vests this court with jurisdiction and defines the scope of the appeal, it is incumbent on an appellant to draft a notice of appeal that sufficiently identifies the order or judgment she is appealing. (Cal. Rules of Court, rule 8.100(a)(2)<sup>5</sup>; *D'Avola v. Anderson* (1996) 47 Cal.App.4th 358, 361; *Luz v. Lopes* (1960) 55 Cal.2d 54, 59 (*Luz*)). Nevertheless, “[I]t is and has been the law of this state that notices of appeal are to be

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<sup>5</sup> All further rule references are to the California Rules of Court.

liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.” (*Luz, supra*, 55 Cal.2d at p. 59.) Construing her notices of appeal liberally, and with the assistance of her Civil Case Information Statement filed in this court, we will consider every order she mentions in the notice.

**1. Respondent Huffer’s Motion to Dismiss Appeal H037179 as Taken from a Nonappealable order must be granted.<sup>6</sup>**

Respondent Huffer moves to dismiss appeal H037179 from the order granting his motion for summary adjudication, as taken from a nonappealable order. The right to appeal is wholly statutory, and Code of Civil Procedure section 904.1<sup>7</sup> specifically enumerates which orders and judgments are appealable. (*Griset v. Fair Political Practices Com’n* (2001) 25 Cal.4th 688, 696-697 (*Griset*)). “Generally, no order or judgment in a civil action is appealable unless it is embraced within the list of appealable orders provided by statute (Code Civ. Proc., § [904.1]).” (*Lund v. Superior Court* (1964) 61 Cal.2d 698, 709.) We are without jurisdiction to consider an appeal unless it is taken from an appealable order.

We previously dismissed the appeal as to the February 2, 2011 order granting the motion for summary adjudication as to Dr. Lien. We now grant the motion to dismiss the appeal as to the February 2, 2011 order granting Dr. Huffer’s motion for summary adjudication. An order granting a motion for summary adjudication is not an appealable order under section 904.1. Such an order is reviewable on appeal after the final judgment. (§§ 437c, subd. (m)(1), 906; see *Griset, supra*, 25 Cal.4th at p. 696; *Levy v.*

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<sup>6</sup> On June 25, 2013, we ordered this motion considered with the appeal.

<sup>7</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

*Skywalker Sound* (2003) 108 Cal.App.4th 753, 761, fn. 7; *Kasparian v. Avalon Bay Communities* (2007) 156 Cal.App.4th 11, 14, fn. 1.) To the extent appellant is trying to appeal the February 2, 2011 order granting summary adjudication, the Dr. Huffer's motion to dismiss is granted. The appeal from that order is dismissed.

***a. Motion for Reconsideration and July "Motion to Reconsider Judgment Notwithstanding the Verdict"***

In the notice of appeal, appellant claims to bring the appeal following "the denial of the Motion to Reconsideration [*sic*] on Judgment notwithstanding the Verdict . . . ."

Appellant did bring a motion for reconsideration of the order granting RMC's summary judgment, which the trial court denied. To the extent that appellant seeks to appeal the order denying a motion for reconsideration, this order is not separately appealable, but could be appealed after entry of judgment. (§ 1008, subd. (g).)

Appellant, however, make no such argument regarding the motion for reconsideration of the order granting RMC's motion for summary judgment.

Although the denial of a motion for judgment notwithstanding the verdict is separately appealable (§ 904.1, subd. (a)(4)), appellant never actually filed a motion for judgment notwithstanding the verdict. She called the motion she filed after the entry of judgment a "motion to reconsider judgment notwithstanding the verdict." In effect, the motion was nothing more than a motion to reconsider a motion to reconsider. To the extent she seeks to appeal that order, we dismiss that appeal as taken from a nonappealable order. (§ 1008, subd. (g).)

**2. Motions to Dismiss the Appeals Based on Defects in the Record and Briefing**

Respondents RMC and Lien also move to dismiss the appeals contending that the record and briefing submitted by appellant in support of her appeals is woefully deficient. We now address each of the alleged defects as to each appeal.

***a. RMC’s Motion to Dismiss Appeal H037179 and Dr. Lien’s Motion to Dismiss Appeal H037235 are denied***

RMC urges this court to dismiss these appeals on the grounds that (1) the opening brief fails to articulate any pertinent or intelligible legal argument and (2) the record is inadequate. Dr. Lien alternatively asks this court to strike the opening brief on the grounds that (1) it does not contain citation to the record, and (2) refers to matters outside the record.<sup>8</sup>

On appeal, “ ‘A judgment or order of the lower court is *presumed 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.) To sufficiently show reversible error or other defect, an appellant has to “provide an adequate record to assess error. [Citations.]” (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must also “ ‘present argument and authority on each point made’ [citations]” (*In re Sade C.* (1996) 13 Cal.4th 952, 994), and support these arguments with appropriate citations to the material facts in the record. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Appellant’s briefing and record fail on all points. Where an appellant fails to raise claims of reversible error and support them with valid arguments, authority, and citation to the record, the court has the discretion to deem the issues on appeal abandoned and may order the appeal dismissed. (Rule 8.204(a)(1)(C); *In re Sade C.*, *supra*, 13 Cal.4th 952, 994; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793 (*Stanley*); *Mansell v.*

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<sup>8</sup> In his respondent’s brief, Dr. Lien argues that we should deny appellant’s motion to augment the appellate record to include the deposition transcript of and medical reports prepared by Dr. Leonard Kalfus. At the time he submitted his respondent’s brief, we had not ruled on the motion. However, on June 29, 2012, we denied the motion to augment the record.

*Board of Administration* (1994) 30 Cal.App.4th 539, 545; *Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 229 (*Troensegaard*)). The opening briefs in appeals H037179 and H037235 are largely unintelligible and contain several broad assertions without citation to specific legal authority to support her claims. Although she lists various statutes, she does so without explaining their relevance to her claims on appeal. (See *Stanley, supra*, 10 Cal.4th at p. 793.) Moreover, she fails to cite to the record in violation of rule 8.204(a)(1)(C). (See *Troensegaard, supra*, 175 Cal.App.3d at p. 229.) In the opening brief in appeal H037235, appellant makes allegations against individuals who are not parties to the appeal, and she makes assertions not relevant to this appeal. Given these deficiencies, it would be within our discretion to deem the issues on appeal abandoned.

Appellant also fails to present an adequate appellate record. Where an appellant fails to present an adequate record, we may treat the contention as forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1 (*State Comp. Ins. Fund*)). Appellant designated an appellant's appendix rather than a clerk's or reporter's transcripts. Her appendix in appeal H037179 consists of 773 pages and spans three volumes, and in appeal H037235, her appendix consists of 174 pages in one volume. The appendix, however, does not include any of the parties' moving and responding papers. Without these documents, we are unable to review appellant's contention that the trial court erred in granting the respondents' summary judgment motions. Appellant also includes and relies on evidence which is not properly part of the record on appeal. For instance, the deposition transcript of Dr. Leonard Kalfus was never admitted as evidence before the trial court,<sup>9</sup> and thus, it cannot be considered on appeal.

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<sup>9</sup> On August 9, 2011, the trial court heard and granted Dr. Lien's motion for summary judgment. Dr. Kalfuss's deposition was taken on August 10, 2011, and August 11, 2011, which was after the court granted summary judgment.

(*Arnesen v. Raymond Lee Organization, Inc* (1973) 31 Cal.App.3d 991, 995 (*Arnesen*); see also fn. 8, *ante*.) Based on the extreme deficiencies of the opening brief and record on appeal, respondents are correct that it would be within our discretion to treat appellant's contentions as forfeited. (*State Comp. Ins. Fund, supra*, 199 Cal.App.4th at pp. 1528-1529, fn. 1.)

However, RMC and Dr. Lien have, themselves, submitted additional appendices in support of their briefs and motions, filling in many of the gaps left by appellant's appendix. These appendices permit us to review the orders granting summary judgment on their merits. Because there is a preference for resolution of appeals on their merits, we will not deem the issues on appeal abandoned or dismiss appeals H037179 and H037235 on procedural grounds. (See *American Motorists Ins. Co. v. Cowan* (1982) 127 Cal.App.3d 875, 882.)

***b. Respondents Huffer and Saranto's Motions to Dismiss Appeal H037517  
Must be Granted***

Respondents Huffer and Saranto also move to dismiss on the ground that appellant has failed to identify a reversible error and has not provided an adequate record on appeal.

As is the case in the other two appeals, appellant elected to provide an appendix in support of her appeal from the judgments entered in favor of Doctors Huffer and Saranto. However, unlike in appeals H037179 and H037235, where respondents provided us with sufficient records to consider the appeals on the merits, we are unable to perform a meaningful review of the judgments with the record before us.

With respect to the appeal from Dr. Huffer's summary judgment, appellant's appendix includes only the court's order granting the motion for reconsideration and summary judgment. The appendix does not include any moving or opposing papers

related to the motion for summary judgment or the motion for reconsideration.

Dr. Huffer did not submit a respondent's appendix. From this record, we cannot determine whether there were any triable issues of material fact.

We are also unable to review whether there was any reversible error in Dr. Saranto's jury trial because the opening brief fails to state a claim of error by the trial court and the record is inadequate.

Appellant's opening brief merely reasserts her claims against Dr. Saranto. In essence, she requests that this court review and reweigh the evidence presented at the trial. Appellant, however fails to allege any reversible error by the trial court. (See § 475.) Therefore, appellant fails to meet her burden of raising a claim of reversible error or any other defect and we may treat any contentions of error as abandoned. (*In re Sade C.*, *supra*, 13 Cal.4th at p. 994; *Stanley*, *supra*, 10 Cal.4th at p. 793.)

Even if she alleged some reversible error at trial, we are unable to review the claim as the record is inadequate. Appellant has elected to proceed without a reporter's transcript, and thus, she prosecutes the appeal " 'on the judgment roll.' " (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) Appellant has designated an appendix, which includes: orders related to demurrers and motions to strike, the third amended complaint, documents related to her expert witness, Dr. Kalfuss, documents regarding code of ethics, documents related to hospital procedures and standards, Dr. Saranto's curriculum vitae, documents described as exhibits to her complaint, the notice of appeal, the notice designating the record of appeal, notice of entry of judgment for Dr. Saranto, and the notice of entry of Dr. Huffer's summary judgment. She has not included any record of the underlying trial proceedings, which would allow this court even to understand, let alone meaningfully review, appellant's claim.

As appellant has failed to meet her burden on appeal of providing an adequate record and of demonstrating error, we must dismiss appeal H037517 in its entirety. (*State Comp. Ins. Fund, supra*, 199 Cal.App.4th at p. 1528-1529, fn. 1.)

***B. The Judgments in the Remaining Appeals Must be Affirmed***

The only appeals remaining for substantive review are appeal H037179 from the judgment entered on June 21, 2011 after the trial court granted RMC's motion for summary judgment, and appeal H037235 from the judgment entered on September 14, 2011 after the trial court granted Dr. Lien's motion for summary judgment. We now consider these appeals on the merits.

**1. Standard of Review**

On appeal, we review an order granting a motion for summary judgment de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860 (*Aguilar*)). The trial court's rationale for granting summary judgment is not binding. (*Ramalingam v. Thompson* (2007) 151 Cal.App.4th 491, 498.) In performing this independent review, we apply the same three-step process as the trial court. "Because summary judgment is defined by the material allegations in the pleadings, we first look to the pleadings to identify the elements of the causes of action for which relief is sought." (*Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 159 (*Baptist*)).

"We then examine the moving party's motion, including the evidence offered in support of the motion." (*Baptist, supra*, 143 Cal.App.4th at p. 159.) A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is a complete defense to that cause of action. (§ 437c, subd. (o); *Aguilar, supra*, 25 Cal.4th at p. 850.)

If the defendant fails to make this initial showing, it is unnecessary to examine the plaintiff's opposing evidence and the motion must be denied. However, if the moving papers make a prima facie showing that justifies a judgment in the defendant's favor, the burden shifts to the plaintiff to make a prima facie showing of the existence of a triable issue of material fact. (§ 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 849.)

In determining whether the parties have met their respective burdens, "the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom [citations], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party." (*Aguilar, supra*, 25 Cal.4th at p. 843.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850, fn. omitted.) Thus, a party "cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]" (*LaChapelle v. Toyota Motor Credit Corp.* (2002) 102 Cal.App.4th 977, 981.)

## **2. RMC's Motion for Summary Judgment Was Properly Granted and That Portion of Appeal Number H037179 Must be Affirmed.**

Appellant contends that the trial court erred in granting RMC's motion for summary judgment on the negligence, unprofessional conduct, intentional tort, and intentional infliction of emotional distress causes of action. She argues that there was a triable issue of material fact remaining as to all the alleged causes of action. She also claims that the doctrine of *res ipsa loquitur* applies and therefore, the question of whether RMC breached the standard of care could have been reached without expert testimony.

In their motion for summary judgment, RMC argued that no triable issue of material fact existed as to the negligence and “unprofessional conduct” causes of action, because there was no evidence that they breached the standard of care. They further argued that there was no triable issue of material fact as to whether there was an extreme or outrageous conduct or as to whether defendant’s actions caused severe emotional distress. Lastly, with respect to the “intentional tort” cause of action, which was only alleged against respondent Caldwell, but not as to Regional Medical Center of San Jose, Solano or Shiner, RMC argued that if appellant was trying to allege conspiracy, there was no triable issue of material fact as to whether anyone planned to commit a wrongful act or that anyone agreed to provide substandard care. If appellant was trying to allege battery, RMC argued there was no triable issue of material fact as to whether anyone touched appellant in offensive manner or performed any type of procedure on her without consent. If appellant was trying to allege fraud, RMC argued there was no triable issue of material fact as to misrepresentation of fact or any resulting damages.

RMC supported its motion with a separate statement of undisputed facts and an expert declaration from Katherine Kelly, R.N., a certified registered nurse. Kelly had reviewed the medical records in this case and opined that none of the hospital workers “breached the standard of care owed to Plaintiff, caused her injury, or intentionally acted in a way designed to cause her injury.” Specifically, Kelly concluded that Caldwell acted in the “usual fashion of a physical therapist trying to teach mobility skills to a patient that is being discharged.” Kelly also opined that the social workers, Solano and Shiner, merely reported facts about appellant’s medical insurance, finances, and housing. According to Kelly, there was “no indication that the [social workers’ reported] facts were incorrect or in any way damaged Ms. Campanale.”

While appellant opposed the motion, her opposition merely reasserted the facts and arguments listed in her complaint. Her opposition did not include an expert

declaration,<sup>10</sup> nor did she file a response to RMC’s separate statement of undisputed material facts or her own separate statement of disputed material facts.

After the parties submitted the matter, the trial court granted RMC’s motion for summary judgment. The court held that RMC’s “introduced admissible, expert opinion evidence showing that they met the standard of care,” which “met their initial burden as to the professional negligence and ‘unprofessional conduct’ causes of action.” The court also found that “[s]ince intentionally harming [appellant] would have breached the standard of care, Nurse Kelly’s conclusion that the standard of care was met also satisfies Defendants’ initial burden of showing that Plaintiff’s intentional tort and intentional infliction of emotional distress causes of action have no merit.” The court pointed out that appellant “did not introduce any admissible conflicting expert evidence addressing the standard of care.” Additionally, the court noted that she did not file a code-compliant response to the RMC’s separate statement or provide her own separate statement setting forth any material facts which she contends are disputed. Thus, the court held that she “failed to establish a triable issue of material fact as to any cause of action.”

***a. Negligence and “Unprofessional Conduct” Causes of Action***

In her complaint, appellant alleged professional negligence and “unprofessional conduct” based on RMC purported substandard care in treating her injuries. To survive a motion for summary judgment, a plaintiff must provide admissible evidence of “(1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal

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<sup>10</sup> Appellant submitted an expert declaration of Dr. Leonard Kalfuss after summary judgment had been entered. She attached this declaration to her motion for reconsideration of the summary judgment. Our review of the record is limited to the evidence that was presented to the trial court at the time of the summary judgment order. (*Arnesen, supra*, 31 Cal.App.3d at p. 995.)

connection between the negligent conduct and the injury; and (4) resulting loss or damage.” (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) The central question is whether the defendant breached the prevailing standard of care as to the type of treatment which the plaintiff claims caused his or her injury. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.) The applicable standard of care and whether in the relevant circumstances the defendant violated it, “can only be proved by opinion testimony unless the medical question is within the common knowledge of laypersons.” (*Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 844.) “ ‘ “When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.” [Citations.]’ [Citations.]” (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 607.)

Here, RMC met their initial burden on summary judgment by demonstrating that they did not breach the standard of care owed to appellant. They supported their motion with Kelly’s expert declaration, which established that RMC met the standard of care in treating appellant. Appellant, on the other hand, did not proffer competing expert testimony on the standard of care, nor did she provide a separate statement of undisputed or disputed fact. Therefore, appellant failed to raise a triable issue of material fact as to her negligence and unprofessional conduct claims. (See *Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985.)

For the first time of appeal, appellant contends that expert testimony was not required to establish RMC’s negligence because “[t]he issues of this case require common knowledge that an ordinary man should be able to comprehend.” Thus, she argues that she did not need to submit expert testimony on her negligence claim because the doctrine of *res ipsa loquitur* applies. It also appears that appellant contends for the

first time that Kelly was not qualified to testify as an expert.<sup>11</sup> Whether something is “common knowledge” for an “ordinary man” and whether an individual is qualified as an expert are both questions of fact for the trial court. Because appellant failed to raise these factual issues below, we cannot consider them for the first time on appeal. (See *Estate of Westerman* (1968) 68 Cal.2d 267, 279; *Richmond v. Dart Industries, Inc.* (1987) 196 Cal.App.3d 869, 879.) Summary judgment was properly granted with respect to the negligence and “unprofessional conduct” causes of action, and therefore, we will affirm the judgment.

***b. “Intentional Tort” and Intentional Infliction of Emotional Distress  
Causes of Action***

The main thrust of appellant’s “intentional tort” claim is that Caldwell “intentionally acted with reckless disregard towards plaintiff’s safety and intentionally endangered her life.” As to the intentional infliction of emotional distress claim, she alleged that RMC’s “rude” conduct and substandard care caused her severe emotional distress.

In the motion for summary judgment, RMC established that the of the employees of Regional Medical Center of San Jose, including Caldwell did not breach the standard of care owed to appellant, caused her injury, or intentionally acted in a way designed to cause her injury. Since appellant failed to present any facts or evidence sufficient to raise a triable issue of material fact as to any of her claims, the trial court properly granted summary judgment as to the “intentional tort” causes of action.

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<sup>11</sup> At oral argument appellant claimed that she challenged Nurse Kelly’s qualification at the trial court. On this record, there is no indication that such an objection was made. Even if she had made a proper objection, the failure to produce an adequate record precludes our review of the claim. (See *State Comp. Ins. Fund, supra*, 199 Cal.App.4th at pp. 1528-1529, fn. 1.)

### **3. Appeal Number H037235 Must be Affirmed Because Lien’s Motion for Summary Judgment Was Properly Granted.**

In this appeal, appellant contends that the trial court erred in granting Dr. Lien summary judgment of the “intentional tort” and intentional infliction of emotional distress causes of action.<sup>12</sup> A de novo review reveals that appellant has failed to raise a triable issue of material fact as to either cause of action. (*Aguilar, supra*, 25 Cal.4th at p. 860.)

Both the “intentional tort” and “intentional infliction of emotional distress” causes of actions against Dr. Lien depended on appellant’s allegation of a conspiracy, in which Dr. Lien purportedly agreed with another doctor to refuse treatment to appellant’s right hand. Appellant’s allegation was based on her belief that she overheard two individuals discussing withholding treatment from her. In his motion for summary judgment, Dr. Lien argued that there were no triable issues of material fact as to either the intentional torts because there was no evidence that there was a plan to commit a wrongful act, that Dr. Lien agreed with a coconspirator and intended to provide substandard care, or that he engaged in conduct that was extreme or outrageous. Dr. Lien presented evidence that appellant had misidentified him as the person involved in the conspiracy. This contention was supported by appellant’s own deposition testimony, where she identified the person involved in the conspiracy as a Caucasian male. Dr. Lien, however, is of Asian ancestry.

In appellant’s opposition, she argued that she did not mistake Dr. Lien’s identity, but she presented no evidence to support that claim or to contradict her own testimony. Instead, appellant argued there were triable issues of material fact regarding Dr. Lien’s

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<sup>12</sup> As previously discussed, the negligence causes of action against Dr. Lien were adjudicated in a prior motion for summary adjudication. We dismissed the appeal from the order granting summary adjudication as taken from a nonappealable order. Although appellant could have appealed that order after the entry of final judgment in this appeal, she has not elected to do so.

negligence. With this opposition, she included a declaration from Dr. Leonardo Kalfuss, a board certified orthopedic surgeon, who concluded that the hospital staff fell below the standard of care. However, Dr. Kalfuss did not give an opinion as to whether Dr. Lien committed an intentional tort or intentionally inflicted emotional distress.

The trial court granted Dr. Lien's summary judgment finding that appellant had failed to establish a triable issue of material fact as to the intentional tort or intentional infliction of emotional distress causes of action. The court noted that "[i]n support of both causes of action, [appellant] alleges that Dr. Lien 'willfully and intentionally participated in a conspiracy to refuse to provide [appellant] with the standard level of treatment and care' and 'willfully participated in a conspiracy to refused [sic] to provide a professional diagnosis.'" The court found that Dr. Lien's evidence demonstrated that he was the victim of mistaken identity. Moreover, the court found that Dr. Liu's expert testimony established that Dr. Lien's failure to initially diagnose the fracture was not extreme or outrageous conduct. The court noted that although Dr. Kalfus opined that the treatment fell below the standard of care, he did not opine that any of the doctors committed an intentional tort or engaged in conduct that was outrageous.

***a. "Intentional Tort" Cause of Action***

The gravamen of the "intentional tort" claim here is that Dr. Lien "willfully and intentionally participated in a conspiracy to refuse to provide plaintiff with the standard level of treatment and care." A plaintiff alleging conspiracy must show (1) an agreement to commit a wrongful act; (2) commission of the wrongful act; and (3) damages. (*Kidron v. Movie Acquisition Corp.*(1995) 40 Cal.App.4th 1571, 1581.)

Dr. Lien's evidence demonstrated that appellant misidentified Dr. Lien as the person involved in the conspiracy. Appellant has not provided any evidence to support her contention that she did not mistake him for another. Thus, the undisputed material

facts establish that appellant did not hear or witness Dr. Lien agree to withhold treatment. Therefore, as appellant cannot show that there is a triable issue of material fact as to whether Dr. Lien made an agreement to commit a wrongful act, the trial court properly granted summary judgment.

***b. Intentional Infliction of Emotional Distress***

In the complaint, appellant asserts an intentional infliction of emotion distress claim against Dr. Lien on the ground that he intentionally refused to provide treatment to appellant's right hand and the subsequent conspiracy to withhold treatment was outrageous conduct that caused her severe emotional distress. Appellant has failed to establish that there was a triable issue of material fact as to the intentional infliction of emotional distress claim because she had provided no evidence of outrageous conduct. She neither heard nor witnessed Dr. Lien conspiring with another person to withhold treatment. Furthermore, Dr. Lien presented Dr. Liu's declaration as evidence that his failure to initially diagnose appellant's right hand did not amount to outrageous conduct. Appellant's own expert did not give an opinion as to whether Dr. Lien engaged in outrageous conduct. The trial court thus properly granted summary judgment as to the intentional infliction of emotional distress cause of action.

**DISPOSITION**

In appeal number H037179, respondent RMC's motion to dismiss the appeal is denied. The Judgment entered after the trial court granted summary judgment in favor of RMC is affirmed.

Respondent Huffer's motion to dismiss the appeal from the order granting summary adjudication is granted. The appeal is dismissed as taken from a nonappealable order.

In appeal number H037235, respondent Lien's motion to strike the opening brief or dismiss the appeal is denied. The judgment entered after the trial court granted summary judgment in favor of Dr. Lien is affirmed.

In appeal H037517, respondents Huffer and Sarranto's motions to dismiss the appeal from the judgments entered after the trial court granted Dr. Huffer's summary judgment and the jury returned a verdict in favor of Dr. Saranto are granted. The appeal is dismissed in its entirety.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.