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

ROBERT KLURE,

Defendant, Cross-complainant and
Appellant ,

v.

FERNANDO JIMENEZ,

Cross-Defendant and Respondent.

H037183

(Santa Clara County
Super. Ct. No. CV086862)

In this case, June Stough filed suit against Appellant Robert Klure for financial fraud. Appellant filed a cross-complaint against Respondent Fernando Jimenez. The trial court dismissed respondent from the case, and entered judgment in favor of respondent.

In this appeal, appellant asserts the court erred in dismissing Jimenez from the case.

STATEMENT OF THE CASE

In May 2007, Ms. Stough filed a complaint against appellant for misappropriation of funds. Appellant filed a cross-complaint against respondent and others alleging respondent was part of a conspiracy to embezzle assets and money belonging to him and Ms. Sough.

In January 2011, on request from respondent, the trial court dismissed him from the case. A month later, appellant requested the court reconsider its decision to dismiss

respondent from the case. In March 2011, the court granted appellant's motion for reconsideration, however, appellant did not serve respondent with the motion until after the date it was heard in court.

In July 2011, respondent filed a motion to vacate the order granting appellant's motion for reconsideration based on appellant's failure to timely serve the motion on respondent. The court granted respondent's motion to vacate, and entered a judgment of dismissal in favor of respondent.

DISCUSSION

Here, appellant is challenging the trial court's order vacating its grant of appellant's motion for reconsideration, and entering a judgment of dismissal in favor of respondent.

Other than make factual statements and assertions of error, appellant does not provide reasoned legal argument or citation to the record in his appeal.

One of the fundamental rules of appellate review is that an appealed judgment 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 has the burden of overcoming the presumption of correctness. "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) California Rules of Court, rule 8.204(a)(1) provides in relevant part that on appeal, "(1) Each brief must: . . . [¶] (B) [s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority; and [¶] (C) [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears."

These requirements apply with equal force to parties, like appellant, who represent

themselves. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.) “When a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys. [Citations.] Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation].” (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638, fn. omitted.)

The appellant’s burden on appeal requires “more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court’s role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2009) ¶ 8:17.1, p. 8-6, citing *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.) When the appellant asserts a point but fails to support it with reasoned argument and citations to authority, the appellate court may treat it as waived and pass it without consideration. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

It appears the basis of appellant’s argument in this case is that the trial court violated the principals of stare decisis in vacating its grant of a motion for reconsideration. However, appellant does not cite any legal authority to support this argument, nor does he cite to the record.

We conclude that appellant has not met his burden on appeal of presenting “meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error” with regard to her case. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) Because error has not been affirmatively shown, the judgment is presumed correct, and will be affirmed. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, 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.