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

XAVIER LAMAR J'WEIAL,

Plaintiff and Appellant,

v.

L.T. STEVENSON et al.,

Defendants and Respondents.

H037421

(Monterey County

Super. Ct. No. M107891)

I. INTRODUCTION

Appellant Xavier Lamar J'Veial is a self-represented state prison inmate who filed a complaint alleging wrongdoing by several prison employees. The trial court dismissed his action with prejudice as a sanction for J'Veial's failure to appear at a case management conference, failure to file a proof of service, and failure to obtain defendant's appearance, default or dismissal.

On appeal, J'Veial does not address the merits of the trial court's order. As we will further explain, we must presume that the order is correct and since J'Veial has failed to affirmatively show error, we will affirm the dismissal order. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).)

II. BACKGROUND

On August 25, 2010, J'Weial filed a personal injury complaint against defendants "L.T. Stevenson, Sgt. T. Williams, [and] CCI B. Burkhardt." We understand the complaint to allege that all three defendants are employees of Salinas Valley State Prison who failed to protect J'Weial from being assaulted by a fellow inmate. The causes of action included in the complaint were "general negligence" and "intentional tort". The summons was filed on August 25, 2010.

A case management conference was set for January 21, 2011. No party appeared on the case management conference and the minute order for January 21, 2011, states that the "[c]ase [is] continued to **Friday, August 26, 2011 at 10:30 a.m. in courtroom #14** for Order to Show Cause for Plaintiffs Failure to Appear, Failure to File Proof of Service, Failure to Obtain Defendant's Appearance, Default or Dismissal."

On January 25, 2011, the trial court mail-served an "Order Setting An Order To Show Cause Regarding Sanctions" on J'Weial at his Salinas Valley State Prison address. The notice stated that a hearing was set on August 26, 2011, on the "**ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE ORDERED** for failure to follow Local Court Rules and/or the prior Order of the court **AND FOR FAILURE TO APPEAR ON 01/21/2011, FAILURE TO FILE PROOF OF SERVICE, FAILURE TO OBTAIN DEFENDANT'S APPEARANCE, DEFAULT OR DISMISSAL.**" The order directed the parties to file case management statements no later than 15 days before the hearing and stated that "**[a]n attorney/party knowledgeable in all aspects of the case shall be present.**"

J'Weial filed a document captioned " 'JUDICIAL NOTICE' " on January 27, 2011, in which he asserted that he had not been given notice of "of any form of a rescheduleing [sic] by the Court(s)." He also asserted that he "does want to be present for all & any Conference(s)"

The minute order for the August 26, 2011 hearing on the order to show cause states in its entirety: “Case called for hearing on an order to show cause as to why sanctions should not be ordered for plaintiff’s failure to appear on 01/21/2011 for a case management conference, failure to obtain service, an appearance or file a dismissal. [¶] The Plaintiff is not present. The Plaintiff has failed to obtain service, an appearance or file a dismissal. [¶] The court dismisses this case with prejudice as a sanction.”

J’Weial filed a notice of appeal on September 20, 2011.

III. DISCUSSION

On appeal, we understand J’Weial to argue that defendants are liable for failing to protect him from assault by a fellow inmate at Salinas Valley State Prison. J’Weial does not address the merits of the trial court’s order dismissing his case with prejudice on the grounds that he failed to appear at a case management conference, failed to file a proof of service, and failed to obtain defendant’s appearance or file a dismissal.

The general rule is that the trial court’s judgment or order is presumed correct and on appeal, error must be affirmatively shown. (*Denham, supra*, 2 Cal.3d at p. 564.) The appellant therefore has the burden of raising claims of “reversible error or other defect” and to “ ‘present argument and authority on each point made.’ [Citations.]” (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Where the appellant fails to do so, “he [or she] may, in the court’s discretion, be deemed to have abandoned his [or her] appeal. [Citation.] In that event, it may order dismissal. [Citation.]” (*Ibid.*)

J’Weial is not exempt from compliance with the rule that an appellant must affirmatively show reversible error because he is representing himself on appeal. “Under the law, a party may choose to act as his or her own attorney. [Citations.] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Thus, a self-represented litigant is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Moreover, “ [t]his court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record.’ [Citation.]” (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) We note, however, that the trial court had the discretion to dismiss J’Weial’s action under the circumstances of this case.

The California Rules of Court place a time limit on the service of the complaint and the filing of proofs of service, as follows: “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” (Cal. Rules of Court, rule 3.110(b).) “If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.” (Cal. Rules of Court, rule 3.110(f).)

Government Code section 68608, subdivision (b) provides: “Judges shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case. Judges are encouraged to impose sanctions to achieve the purposes of this article.”

Here, the record does not show that J’Weial served his complaint, which he had filed on August 25, 2010, on any of the defendants or that he filed proofs of service prior to the August 26, 2011 hearing on the order to show cause why he should not be sanctioned for his failure to do so. The trial court therefore acted within its discretion when the court dismissed J’Weial’s action with prejudice, and we will affirm the dismissal order.

IV. DISPOSITION

The August 26, 2011 order dismissing the action with prejudice is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

PREMO, ACTING P.J.

GROVER, J.