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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MERRILL ADAMS,

Plaintiff, Cross-Defendant, and
Appellant,

v.

MARIA ROCHA,

Defendant, Cross-complainant and
Respondent;

ASHLEY ROCHA,

Defendant and Respondent.

H040319

(Santa Clara County
Super. Ct. No. 1-11-CV204753)

Appellant Merrill Adams seeks review of an order and judgment enforcing a settlement agreement in his action against respondents Maria and Ashley Rocha. Both parties are representing themselves on appeal, as has appellant throughout the litigation. Appellant raises numerous issues for review, most of which we cannot address at this stage of the litigation. Finding no error, we must affirm the judgment.

Background

The scant record provided by appellant contains no evidence of the nature of the underlying dispute or the proposed settlement. We have no pleadings, no moving papers, no written opposition, no draft of a settlement agreement. Nevertheless, each party has undertaken to summarize the history of the litigation. As a result, nearly all of their

factual assertions are unaccompanied by citation to any supporting evidence in the record. In this opinion we resort to the judgment, in which the trial court describes the history of the litigation and the terms of the oral settlement, minimally supplemented by the mostly irrelevant testimony by Maria Rocha on the first (and last) day of the court trial. We therefore rely on the court's account and disregard the purported statements of fact in both parties' briefs. (See Cal. Rules of Court, rule 8.204(a)(1)(C).)

Appellant initiated this litigation with a complaint against respondents for breach of contract, assault and battery, trespass to land, conversion, negligent infliction of emotional distress, intentional infliction of emotional distress, private nuisance, public nuisance, and elder abuse. Maria Rocha (hereafter, Rocha) cross-complained against appellant and his wife, Julia Adams, to quiet title and to terminate a "Water and Pumping Plant Agreement" pertaining to the adjoining parcels owned by the Adamses and Rocha.

On February 21, 2013, in the middle of the second day of the court trial, the parties, with the court's assistance, engaged in negotiations culminating in an oral settlement. Respondents' counsel recited the terms: Respondents would disconnect the electrical power on the panel that extended to the power pole on the Adamses' property, and then reconnect it to a new panel on respondents' property. Respondents further agreed to maintain the existing water system as long as all parties lived, with the PG&E expense to be shared equally. Upon the death of a party *or* sale to a "nonrelative," the responsibility of the parties would revert to the prior "Water and Pumping Plant Agreement" recorded in 1979, but until then the easement allowing the Adamses access to Rocha's property would be extinguished. In addition to some subordinate additional terms, respondents agreed to pay appellant \$7,000 within 30 days, and the parties agreed to a mutual release of all future claims, expressly waiving Civil Code section 1542.

These terms were to be reduced to a writing signed by all four parties, and the complaint and cross-complaint were to be dismissed with prejudice, each side bearing its own costs and attorney fees. A dismissal review hearing was set for May 9, 2013.

Appellant and Julia Adams, however, refused to sign the document prepared by respondents' attorney. Instead, appellant moved to modify or amend the stipulation. The motion was denied without prejudice because Julia Adams, as a cross-defendant, had not been served with notice of the hearing.

On July 19, 2013, two motions came before the trial court. Appellant had filed a new motion to modify or amend the stipulation, and respondents had filed a motion to enforce the settlement and enter judgment. At this hearing the court pointed out to appellant that he had not filed opposition to respondents' motion to enforce the settlement. Nevertheless, appellant raised a number of issues that were not in his written modification motion. He accused Rocha of turning off the water supply at various times. He explained that he wanted the stipulation amended to state explicitly that Rocha would be responsible for all expenses of the new system, not just the installation cost, and that he would be obligated to pay for only half the monthly PG&E bill. He disputed the provision for transferring the power source from appellant's property to Rocha's, and he insisted that she had to comply with paragraph No. 6 of the 1979 Well and Pumping Plant Agreement before any transfer of payment and maintenance responsibility could occur.¹

Appellant also accused respondents' attorney, William B. Gustafson, of having spoken too quietly for him to hear at the settlement hearing. Thus, appellant claimed, instead of being "forthright and honest," Gustafson "took advantage of the disabled which is deaf and the elderly. [¶] That's why this . . . contract really is null and void and we should start from scratch and get it right." The court found appellant's complaint about not hearing or understanding the settlement to be "disingenuous."

¹ Apparently appellant was referring to paragraph No. 6 of the original Water and Pumping Agreement, which (as quoted by the trial court) stated, "Either party may elect to put in his own well or hook up to city water and give his total interest to the other party and be relieved of all liability towards this well as per this Agreement. Upon either party abandoning his interest the pumping plant must be in good working order and all current expenses paid."

Appellant further requested modification of the definition of “third party” in the context of Rocha’s prospective sale of her property, which, under the settlement, would terminate the settlement agreement if the third-party purchaser was not a relative. Appellant wanted the term “third party” to apply not only to relatives but also to friends and associates.

The court rejected appellant’s modification request as it pertained to “the pump panel and the PG&E,” as it did not conform to the orally stipulated provision. The court did, however, agree that the original water and pumping agreement should be attached to make it clear that the document would again be in effect should Rocha sell her property to a non-relative. As to the addition of “friend or associate” in the definition of “third party,” the court also rejected that request; but it did agree that the settlement document should more clearly state that Rocha’s sale to a nonrelative would cause the 1979 agreement to be reinstated.

Finally, the subject of attorney fees emerged from the discussion. The document prepared by respondents’ counsel included a new clause providing for attorney fees to be awarded to the prevailing party should it be necessary to enforce the settlement. Appellant said it made “no difference” to him, so the court left that term for further negotiation with respondents’ counsel. He did raise the subject of the mutual release of all claims, arguing that a pending “dog bite” claim he had brought against Rocha should be excluded from the release.

Because the terms remained unsettled, the court continued the hearing to August 23, 2013, to give the parties an opportunity to reach a final, signed agreement. The parties were warned that if they could not agree on a written version of the February 21 agreement, then they all would be required to appear so that the court could “get this finalized,” whether by entering judgment or striking the absent party’s pleadings or “whatever is the appropriate remedy.”

The parties returned to court on September 13, 2013. Appellant and his wife had still refused to sign the revised settlement agreement. Respondents' attorney explained that he had modified it to incorporate the concerns expressed by the court at the July hearing. According to counsel, however, "from Mr. Adams all I get is, I don't like it. But he never states specifically why and his papers don't state specifically why." Appellant and Julia Adams protested the word "terminate" in one of the settlement provisions. That provision would have terminated the easement in the original water and pumping agreement, allowing appellant to enter onto Rocha's property. Appellant asked the court to make a decision on respondents' complaint for quiet title and termination of the well and pumping agreement. He also complained that respondents were "adding the dog bite case in it," which "was not negotiated on the original agreement."² Finally, he expressly stated that "until paragraph six [of the 1979 well and pumping agreement] is . . . completed by Maria Rocha no signature in my opinion has any valiticity [*sic*]. And I cannot sign it before she fulfills paragraph six. And as far as I—my knowledge is if anybody else signs it it's null and void until paragraph six is—if it is pushed to the point where it is now."

The court took the matter under submission. One week later, September 20, 2013, it filed its order and judgment denying appellant's motion, granting respondents' motion to enforce the settlement, and dismissing the complaint and cross-complaint with prejudice. Appellant filed a timely notice of appeal.

Discussion

It is difficult to determine the legal basis for the contentions in appellant's briefs in this court. The caption to appellant's argument indicates that he is challenging only the grant of respondents' motion to enforce settlement, not the denial of his motion to

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We take this to mean that the settlement did not exclude the dog-bite case from the release of all claims.

modify it. Although this caption presents the issue as one directed at sufficiency of the evidence supporting the order, he neither recognizes the standard of appellate review nor addresses any of the facts actually found true by the trial court, particularly what was agreed upon at the hearings on February 13 and July 19, 2013.

Appellant first attacks Gustafson, respondents' attorney. Gustafson, appellants says, "took advantage of" appellant and his wife's "trusting nature and their naiveté" when he "deceived and misrepresented the facts" not only in court but also to his clients and the Adamses. None of the facts appellant asserts to support either this "opinion" or the many others he offers us is accompanied by any citation to the limited record he designated for the appeal. He also accuses the trial court of favoritism toward respondents, by (1) ignoring the request from the Adamses to "validate" the well agreement, (2) granting respondents' motion to enforce the settlement, (3) refusing to "force" Gustafson to modify the contract, (4) concluding the case even though only the court and Gustafson approved the settlement. Appellant appears to argue further (for the first time) that the court's refusal to modify the settlement agreement or allow the case to proceed to a jury trial was "elder abuse," as was Rocha's filing her cross-complaint in the first place.

Appellant's excursive protest, devoid of supporting evidence in the record, falls far short of any cognizable appellate contention. Indeed, many of the asserted facts he offers are entirely new, such as the prospect of untreated sewage that could flow onto a neighbor's organic vegetable field. This is not the forum for raising new causes of action or defenses, no matter how strongly one feels about the outcome of the issues that *were* before the trial court. We thus have no occasion to comment on, much less resolve, the merits of appellant's charges of elder abuse, fraud, mistake, nuisance, "[u]nlawful [c]onsideration," and undue influence.

The only issue that is marginally cognizable is appellant's assertion that there was no meeting of the minds in the formation of the settlement agreement. The record, to

which we are confined in evaluating the sufficiency of the evidence, discloses otherwise. When all the terms had been recited at the February 21, 2013 hearing the court addressed each party individually to ensure that they had all heard and understood the agreement. The following colloquy ensued: “So let’s start with Mr. Adams. Merrill Adams, did you hear the settlement that was recited here on the record? [¶] Mr. Adams: Yes, I have, Your Honor. And I have agreed to all terms. [¶] The Court: Okay. And do you understand the terms. [¶] Mr. Adams: Yes, I understand the terms. [¶] The Court: Okay. And you agree to be bound; correct? [¶] Mr. Adams: I agree to be bound. [¶] The Court: And you stipulate, that means, you agree that the proceedings are deemed to be judicially supervised. [¶] Mr. Adams: Yes, I do.”

The court repeated this colloquy with each of the other parties and obtained the concurrence of respondents’ counsel. The court then made absolutely sure that everyone understood the settlement they had just reached: “Does anyone have any question? Not hearing any question. So then I just want to make sure everyone understands that this case is going to be—in accordance with the agreement—what’s going to happen is defense counsel is going to promptly circulate a written settlement agreement in accordance with the terms that have been stated here on the record for everyone’s signature.” After clarifying the time limits for preparation and circulation of the document, the court added this prescient statement: “[I]f for some reason someone won’t sign the agreement . . . then you can come back into this department and I’ll review the agreement and decide if it is in accordance with what we’ve said.” The court emphasized, however, that if a dispute arose, the agreement was “on the record and the record itself is going to be binding on everyone. So I want to be clear [that] what you agreed to on the record is binding on everyone.”

As if it had not been clear enough, the court then addressed appellant one more time before setting the dismissal review hearing: “So first let me just make sure. I am going to go through one more time. [¶] Merrill Adams, do you agree everything on the

record is binding? [¶] Mr. Adams: Yes, Your Honor. [¶] The Court: All right. And let me ask your wife, Julia Adams, do you agree everything on the record is binding?” The court also made sure that Julia Adams understood her obligation to be present in the event that any party refused to sign the written agreement. Finally, the court *again* stated for the record, “Let’s make sure. Everyone is in agreement that we have a binding settlement. They are going to circulate a document in accordance with it, sign it, and it doesn’t need to involve me. If it hasn’t been signed within the next 21 days you will immediately contact my clerk and set a hearing so we can get that document signed. Talk to each other in good faith and see if you can just work out any problem before you bring it to me.”

From this discussion it is beyond question that the trial court, displaying extraordinary patience despite the excessive consumption of court time, wanted to be certain that all parties understood both the terms and binding nature of the oral settlement they had reached. The court did not release the parties until all parties expressly agreed that they had in fact reached a binding settlement. When appellant later asserted that he had not understood or even heard all of the terms reached on February 21, the court properly found otherwise. The transcript of the February 21, 2013 hearing fully supports that conclusion.

At the final hearing on September 13, 2013, the court again heard appellant’s objections to the most recent draft prepared by Gustafson. As it had warned the parties at the July 19 hearing, the court resolved their dispute by enforcing the settlement agreement in accordance with the terms to which all parties had orally agreed. The September 20, 2013 order and judgment carefully tracks those terms. No error appears on the limited record before us.

Disposition

The judgment is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.

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