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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

XUE XIN LIU,

Plaintiff and Appellant,

v.

YU XIN AN,

Defendant and Respondent.

B278728

(Los Angeles County
Super. Ct. No. GF004898)

APPEAL from an order of the Superior Court of
Los Angeles County. Theresa M. Traber, Judge. Affirmed.

Encore Law Group, Anna S. Karczag; Law Office of
David L. Fleck, Inc., David L. Fleck and Gigi Gutierrez for
Plaintiff and Appellant.

Castleton Law Group and James B. Green for Defendant
and Respondent.

Plaintiff and appellant Xue Xin Liu challenges the trial court's denial of his motion to disqualify Castleton Law Group (Castleton) from representing defendant and respondent Yu Xin An in the underlying litigation.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

In January 2015, defendant retained Castleton in connection with the preparation of a revocable trust. She and Castleton signed a written retainer agreement, and defendant remained a client of the firm.

Several months later, defendant returned to discuss a potential irrevocable trust in favor of her children.¹ She walked into the meeting with plaintiff. Before anything substantive was discussed, plaintiff and defendant had a disagreement, and plaintiff left.

On June 19, 2015, plaintiff, defendant, and Castleton attorneys participated in another meeting. At that meeting, and prior to discussing the substance of the trust, two Castleton attorneys informed plaintiff that they represented defendant and could not represent him. Plaintiff stated that he understood that Castleton was not his counsel. At the meeting, plaintiff was presented with a written acknowledgement form confirming such understanding. Although he expressed reservations about signing the acknowledgement form, he did so at Castleton's insistence before the meeting could proceed. The text of the form was translated for plaintiff prior to his execution of the form.

¹ Plaintiff and defendant are the children's parents.

Following plaintiff's execution of the acknowledgement form, a Castleton attorney went through the material terms of the trust with plaintiff and defendant in Mandarin. There was a brief discussion about whether plaintiff needed to be named as a settlor since he was not contributing any property to the trust; both he and defendant indicated that they wanted plaintiff listed as a settlor. Plaintiff also insisted on an unnecessary provision stating that he previously owned the real property that was the subject of the trust, but that he gave it to defendant.

At no time did plaintiff execute a retainer agreement with Castleton. At no time did any Castleton attorney ever speak with plaintiff outside defendant's presence. At no time did any of the parties discuss anything other than the creation of the trust. At no time did plaintiff request written translations of any document.

Following the June 19, 2015, meeting, plaintiff asked to pay defendant's legal bill. Castleton did not ask plaintiff to pay the bill.

II. Procedural Background

On September 9, 2015, plaintiff filed a complaint against defendant alleging fraud. Castleton entered an appearance representing defendant. One month later, on October 26, 2015, plaintiff filed the underlying paternity action against defendant. Castleton entered an appearance on behalf of defendant on December 4, 2015.

On April 28, 2016, plaintiff filed a motion to disqualify Castleton from representing defendant.

Plaintiff's motion was heard on July 5, 2016. After entertaining oral argument, the trial court denied plaintiff's motion on the grounds that (1) there was no credible objective

evidence of an attorney-client relationship between plaintiff and Castleton; (2) there was no ground for disqualification based upon the possibility that a Castleton attorney may be a witness; (3) there was no evidence that plaintiff provided any confidential information to Castleton; and (4) there was no justification for plaintiff's delay in bringing the motion, and undisputed prejudice to defendant if the motion were granted.

Plaintiff's timely appeal ensued.

DISCUSSION

I. Inadequacy of plaintiff's appellate briefs and appellate record

In addressing an appeal, we begin with the presumption that a judgment or order of the trial court is presumed correct and reversible error must be affirmatively shown by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant must "present argument and authority on each point made" (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B)) and cite to the record to direct the reviewing court to the pertinent evidence or other matters in the record that demonstrate reversible error. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) It is not our responsibility to comb the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768) and an appellant's "[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [the appellant]. [Citation.]" (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) If the appellant fails to cite to the record

or relevant authority, we may treat the issue as waived. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.)

Applying these legal principles, we note that plaintiff’s appellate briefs are woefully inadequate. His statement of facts contains not one citation to the appellate record. And his record on appeal is incomplete. It contains only (1) Findings and Order After Hearing; (2) Notice of Appeal; Notice Designating Record on Appeal; and (3) the Reporter’s Transcript from the July 5, 2016, hearing. Thus, while the statement of facts in the opening brief purports to draw all facts “from the pleadings filed in support of” plaintiff’s motion to disqualify Castleton, plaintiff neglected to provide those pleadings to us. He did not even submit a copy of the motion to disqualify counsel.² In short, plaintiff has not overcome the presumption of the correctness of the trial court order because he did not present an adequate record. (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1320–1321.)

For this reason alone, we could affirm the trial court order. However, for the sake of completeness, and based upon the evidence provided by defendant, we turn as best we can to the merits of plaintiff’s appeal.

II. Standard of review

“We review a trial court’s decision on a disqualification motion for abuse of discretion, accepting as correct all of its express or implied findings supported by substantial evidence. [Citation.]” (*City National Bank v. Adams* (2002) 96 Cal.App.4th 315, 322.) “In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence

² Plaintiff belatedly provided us with a copy of the underlying motion in a “reply appendix.”

unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable.’ [Citations.] We presume the trial court found for the prevailing party on all disputed factual issues. [Citations.] [¶] We will reverse the trial court’s ruling only where there is no reasonable basis for its action. [Citation.]” (*City National Bank v. Adams, supra*, at pp. 322–323.)

III. The trial court properly denied plaintiff’s motion to disqualify Castleton

Plaintiff argues that Castleton should have been disqualified from representing defendant because he presented ample evidence of an implied attorney-client relationship between himself and Castleton. The respondent’s appendix indicates otherwise. Although plaintiff contends that he reasonably believed that he was consulting Castleton in a professional capacity, and that Castleton attorneys knew that that was his purpose, the trial court did not abuse its discretion in rejecting this claim. After all, the evidence shows that Castleton informed plaintiff that it was not representing him; it was only representing defendant. Castleton even insisted that plaintiff execute an acknowledgement form so confirming.

Moreover, there is no evidence that plaintiff sought legal advice from Castleton. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 811–812.) And, there is no evidence that Castleton indicated by statements or conduct that it was representing plaintiff. (*Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39.) Rather, as set forth above, the opposite is supported by the evidence—Castleton

expressly advised plaintiff that it represented defendant and could not represent him.

Admittedly, it is undisputed that plaintiff paid Castleton's fees for the trust. "But payment of attorney fees alone does not determine an attorney-client relationship; it is merely a factor." (*Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 Cal.App.4th 1399, 1404.) And all of the other evidence contained in the record, including (1) Castleton's express statement to plaintiff that it did not, and could not, represent him, and (2) Castleton's insistence that plaintiff execute an acknowledgement form so confirming, rebuts any inference arising from the payment of the bill. (*Ibid.*)

To the extent plaintiff argues that he was tricked into signing the acknowledgement form and did not understand what he was signing because he does not speak or read English, we are not convinced. In support of his motion to disqualify Castleton, plaintiff submitted a multipage declaration—in English. He states in that declaration that he does "not speak or write English language beyond a handful of basic words." How did he sign and submit his supporting declaration in English if he does not speak or write English?³

Finally, we note that in his opening brief, plaintiff does not challenge the trial court's finding that plaintiff unreasonably delayed in bringing his motion to disqualify Castleton and that such delay was prejudicial. (*In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 599.) His argument first raised in the

³ There is no evidence that this supporting declaration was translated into Mandarin.

reply brief is too late. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

That said, again for the sake of completeness, we note the following: As set forth in the appellate record, plaintiff filed two lawsuits against defendant, in September and October 2015, respectively, and Castleton appeared on defendant's behalf in November and December 2015, respectively. Accordingly, at the very latest, plaintiff was aware by November 2015 that Castleton represented defendant. Yet, he took no steps to disqualify Castleton from representing her until April 2016. And he has offered no explanation for this delay. Under these circumstances, the trial court did not abuse its discretion in finding that plaintiff unreasonably delayed in seeking to disqualify Castleton from representing defendant in this action.

DISPOSITION

The order is affirmed. Defendant is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ