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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JEAN MARC VAN DEN HEUVEL,

Plaintiff and Appellant,

v.

RAYMOND CHARLES VAN DEN  
HEUVEL,

Defendant and Respondent.

B275334

(Los Angeles County  
Super. Ct. No. BC592033)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Jean Marc Van den Heuvel, in pro. per., for Plaintiff and Appellant.

Law Offices of Michael H. White and Michael H. White for Defendant and Respondent.

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Jean Marc Van den Heuvel appeals from a judgment of dismissal entered after the trial court sustained without leave to amend Raymond Charles Van den Heuvel's demurrer to Jean Marc's<sup>1</sup> third amended complaint on the ground that it was barred by the statute of limitations. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. Filing of the Action*

Jean Marc filed his original complaint on January 6, 2015 in the Sacramento County Superior Court. After the court granted Raymond's motion for change of venue, on August 21, 2015 the case was transferred to the Los Angeles County Superior Court.<sup>2</sup>

### *B. Jean Marc's Third Amended Complaint*

Jean Marc filed his third amended complaint on April 1, 2016. His form complaint checks the box for claims for breach of contract, common counts, and an intentional tort of "[f]ailure to complete judiciary obligations to adoption in 1965, leading to injuries in 2010, 2011, 2012, 2013." However, the only facts

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<sup>1</sup> Because the parties share the same last name, we refer to them by their given names to avoid confusion.

<sup>2</sup> The original complaint and transfer order are not included in the record on appeal; rather, the first pleading included in the record is the third amended complaint filed on April 1, 2016. The date of filing of the action is stated in the demurrer filed by Raymond and in his brief on appeal, and Jean Marc does not dispute the filing date.

alleged are those relating to a “Cause of Action—Intentional Tort.”

Jean Marc alleged the following facts in his third amended complaint. He was born in the Belgian Congo, then came to the United States sometime after 1964, when his father was murdered. After Jean Marc’s mother also died, his half-brother Raymond assumed responsibility for Jean Marc by starting the process to adopt him on October 8, 1968. However, Raymond never completed the adoption process.

In 1968 Raymond changed Jean Marc’s name from Jean Marc to John Mark, to prevent family members from locating him. As a result, Jean Marc’s sister Josephine was unable to locate him until she found him through Facebook in 2008.

Raymond was physically abusive in his discipline of Jean Marc. In 1972 Jean Marc and Raymond were involved in a physical confrontation during a vacation at Lake Shasta. Charges were filed against Jean Marc, resulting in his placement in juvenile hall. Raymond refused to allow Jean Marc to live with him from 1974 to 1975. Once Jean Marc turned 18, Raymond refused to support him financially, forcing Jean Marc to live on his own.

Raymond repeatedly refused to assist Jean Marc in obtaining his birth certificate so that he could become a naturalized citizen. In 1975 Raymond failed to comply with a court order to produce all of Jean Marc’s documents necessary for citizenship. On July 7, 1999 a court ordered Raymond to bring all documents regarding Jean Marc’s biological parents to court, but Raymond falsely claimed that Jean Marc’s defense attorney in the juvenile proceeding had his birth certificate.

Raymond maliciously refused to provide Jean Marc with his birth certificate or to help him obtain the birth certificate for a court hearing on March 18, 2010 held in *In the Matter of the Adoption of Jean Marc Van den Heuvel* (Super. Ct. Nevada County, 2010, No. FL07497). The purpose of this hearing was to enable Jean Marc to obtain his birth certificate so he could obtain a passport to visit Josephine in Brussels, Belgium. Following the hearing, Jean Marc obtained an order permitting him to inspect and copy his adoption record.

Jean Marc alleged in his cause of action for intentional tort that by these actions Raymond “intentionally caused the damage to [Jean Marc] on . . . March 16, 2010 at . . . Nevada City, California 95949.”<sup>3</sup> As a result of Raymond’s actions, Jean Marc lost his ability to work in the United States, and became unemployed. Specifically, his social security card stated, “Not Valid for Employment,” and did not enable him to work in the United States. Jean Marc lost real and personal property, and suffered physical and emotional distress. On May 21, 2012 Jean Marc became a naturalized citizen.

C. *Raymond’s Demurrer*

Raymond demurred to the third amended complaint on the grounds the action was barred by the statute of limitations, and the complaint failed to allege facts sufficient to state a cause of action, was uncertain and unintelligible, and failed to allege whether the alleged contract was written, oral, or implied by

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<sup>3</sup> We assume the March 16, 2010 date refers to the hearing in Jean Marc’s adoption case, which is elsewhere alleged to have taken place on March 18, 2010.

conduct. Raymond requested that the court deny leave to amend because this was Jean Marc's fourth attempt to plead a cause of action.

Jean Marc did not file a written opposition to the demurrer, but he, along with counsel for Raymond, appeared at the hearing on the demurrer. Following oral argument, the trial court sustained Raymond's demurrer without leave to amend and entered a judgment of dismissal.

## DISCUSSION

### A. *Standard of Review*

"The application of the statute of limitations on undisputed facts is a purely legal question [citation]; accordingly, we review the lower courts' rulings de novo. We must take the allegations of the operative complaint as true and consider whether the facts alleged establish [the plaintiff's] claim is barred as a matter of law." (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191; accord, *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191, 198 [finding all claims were time-barred based on de novo review].)

We review the trial court's denial of leave to amend for an abuse of discretion, and "decide whether there is a reasonable possibility that the defect can be cured by amendment . . . ." [Citations.] (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; accord, *Stein v. Axis Ins. Co.* (2017) 10 Cal.App.5th 673, 682.) The plaintiff has the burden of proving that an amendment would cure the legal defect. (*Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1132; *Stein, supra*, at p. 682.) "To meet this

burden on appeal, the plaintiff must enumerate the facts and demonstrate how they establish a cause of action.” (*Stein, supra*, at p. 682.)

““Leave to amend is properly denied if the facts and nature of plaintiff’s claim are clear and under the substantive law, no liability exists [citation] or where it is probable from the nature of the defects and previous unsuccessful attempts to plead that the plaintiffs cannot state a cause of action [citation].” [Citation.]’ [Citation.]” (*Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1143.)

B. *Jean Marc Has Failed To Demonstrate That His Action Is Not Barred by the Statute of Limitations*

“Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.’ [Citation.]” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) In his opening brief, Jean Marc summarizes the allegations of Raymond’s “malice” and “cruelty” in his third amended complaint, but fails to address the statute of limitations arguments raised in Raymond’s demurrer.<sup>4</sup> Jean Marc simply

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<sup>4</sup> Jean Marc also contends that venue in the Los Angeles County Superior Court was not proper. However, as we held in *Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935, “Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.]” (*Ibid.*; accord, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 [“Because [the appellant]

asks the court “to look closely at the case litteratures [sic]” to reach a decision in his favor.<sup>5</sup>

Jean Marc has not met his burden to “affirmatively demonstrate error.” (*Ruelas v. Superior Court, supra*, 235 Cal.App.4th at p. 383.) As Raymond points out, any possible cause of action based on the allegations of the complaint is barred by the statute of limitations. The last wrongful act alleged in the third amended complaint occurred on March 18, 2010, when Raymond failed to assist Jean Marc with efforts to obtain his birth certificate for a hearing in his adoption case. Jean Marc

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failed to furnish an adequate record of the attorney fee proceedings, [the appellant’s] claim must be resolved against [him]”]; *Baranchik v. Fizulich* (2017) 10 Cal.App.5th 1210, 1227 [“Because the record is inadequate for appellate review, we presume the court ruled correctly and affirm”].) Here, Jean Marc has failed to provide a record of the initial complaint he filed, the pleadings on Raymond’s motion to change venue, or the trial court’s ruling. Accordingly, we have no record on which to decide whether the trial court erred in granting Raymond’s motion, and this issue must be resolved against Jean Marc.

<sup>5</sup> We acknowledge a self-represented litigant’s understanding of the rules on appeal are, as a practical matter, more limited than an experienced appellate attorney’s. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing. We are required to apply the rules on appeal and substantive rules of law to a self-represented litigant’s claims on appeal, just as we would to those litigants who are represented by trained legal counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) However, in the interests of justice we will address the statute of limitations defense raised by Raymond in his demurrer and addressed in his brief on appeal.

filed his complaint on January 6, 2015, more than four years later.

Thus, Jean Marc's action is barred by the statute of limitations, which at most was four years. (See Code Civ. Proc., §§ 335.1 [two years for personal injury caused by wrongful act or neglect], 337 [four years for written contract], 339 [two years for oral contract], 343 [four years for other relief].)

Because even the longest of the possible limitations periods expired before Jean Marc filed his complaint, the trial court did not err in sustaining Raymond's demurrer to the third amended complaint. (See *Staniforth v. Judges' Retirement System* (2016) 245 Cal.App.4th 1442, 1450-1451, fn. omitted [affirming trial court order sustaining demurrer without leave to amend, finding "under any and all of the possible theories underlying petitioners' common counts, all claims . . . accrued at least seven years (if not decades) before the present action was filed"].)

Further, this was Jean Marc's fourth attempt to state a cause of action, and he has not stated how he could amend his complaint to overcome the statute of limitations bar. Accordingly, the trial court did not abuse its discretion in denying leave to amend. (*Stein v. Axis Ins. Co.*, *supra*, 10 Cal.App.5th at p. 682; *Doe v. United States Youth Soccer Assn., Inc.*, *supra*, 8 Cal.App.5th at p. 1143.)



## DISPOSITION

The judgment is affirmed. Raymond is awarded his costs on appeal.

FEUER, J.\*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.