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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JERRY PANO CONCHA, Plaintiff and Appellant, v. ROBIN RESOVICH, Defendant and Respondent.	B263218 (Los Angeles County Super. Ct. No. BC515589)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Ford Law AZ, Chris Ford and Ginger Marcos, for Plaintiff and Appellant.

No appearance for Respondent.

Jerry Pano Concha brought this action against Robin Resovich for custodial interference and intentional infliction of emotional distress. The trial court entered default against Resovich after denying her motion to quash service of summons. Following a default prove-up hearing, the trial court determined that Concha was not entitled to damages and entered judgment for Resovich. On appeal, Concha argues that he established a prima facie case and presented sufficient evidence at the prove-up hearing to support an award of damages. The record does not support Concha because he did not carry his burden to affirmatively show error. Moreover, because his complaint did not specify the amount of damages, it could not support a default judgment in any amount. (Code of Civ. Proc., § 580, subd. (a);[1] *Stein v. York* (2010) 181 Cal.App.4th 320, 327 (*Stein*).) We therefore affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

This case arises out of an international custody dispute between the parties over their daughter, Katianna. In his complaint, filed in July 2013, Concha alleged that Resovich "abducted Katianna" to France, thereby "robbing [him] of the right to care, custody and companionship of his daughter." As a result, he allegedly "suffered extreme mental anguish and emotional distress" and "spent several years and thousands of dollars in hiring attorneys and international private investigators" to find his daughter. In his prayer for relief, Concha sought compensatory damages "according to proof,"

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[1] Unless stated otherwise, all further statutory references are to the Code of Civil Procedure.

punitive damages, interest, attorney fees, and costs of suit. His complaint did not specify the amount of damages requested.

Upon her return to the United States, Resovich was prosecuted and pleaded no contest to withholding, concealing, and maliciously depriving a lawful custodian of a right to custody. (Pen. Code, § 278.5, subd. (a).) A letter she wrote to the sentencing judge was attached as an exhibit to Concha's complaint. In it, Resovich admitted that she disobeyed a court order by failing to deliver Katianna for scheduled visitations, but sought to explain her actions and enumerate mitigating factors in support of her sentencing position.

The underlying lawsuit was personally served on Resovich in August 2013 at an address in Grass Valley, California. Resovich moved to quash service of summons based on lack of personal jurisdiction. Relying on a venue statute, she argued the court lacked personal jurisdiction because she resided in a different county in California. Following a hearing, the court denied the motion, noting that "lack of personal jurisdiction deals with the forum state," and that Resovich acknowledged that she lived in California. She was ordered to file an answer within 30 days, but she never filed an answer or other responsive pleading. In June 2014, the trial court entered her default. Concha then filed an application for entry of default judgment in the amount of $448,606.06. He requested $400,000 in damages, $36,599.72 in interest, $916.90 in costs, and $11,196 in attorney fees.

The court held a default prove-up hearing in January 2015 at which Concha testified and presented evidence. No court reporter was present. Concha submitted several exhibits, including correspondence with the United States Department of State "regarding international child abduction," findings of the

family court that granted him sole custody over Katianna in 2003, correspondence with private investigators and billing records for investigative services, a retainer agreement with an attorney, and the report of a chemical dependency counselor. These exhibits are not included in the record on appeal.

In February 2015, the trial court entered judgment for Resovich. The court indicated that Concha was to receive nothing from Resovich and denied his request for attorney fees. A statement of decision was not requested. Concha filed a notice of appeal.

Because no court reporter was present at either the hearing on the motion to quash or the default prove-up hearing, Concha filed a motion to a use a settled statement pursuant to California Rules of Court. rule 8.137. The court initially denied the motion on the ground that he did not provide proof of service of the motion on Resovich. This was followed by a second motion. But the second motion and the attached condensed narrative described only the hearing on the motion to quash; there was no mention of the default prove-up hearing. The trial court granted the second motion and issued a statement, which largely restated its order denying Resovich's motion to quash.

DISCUSSION

On appeal, Concha argues that because the allegations in his complaint and the evidence he submitted at the prove-up hearing were sufficient to establish a prima facie case, the trial court was required to render judgment in his favor and award damages. (See *Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361-362.) We disagree.

"Generally, a defendant in default 'confesses the material allegations of the complaint. [Citation.]' (*Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408.) Nonetheless, the trial court may not enter a default judgment when the complaint's allegations do not state a cause of action. [Citations.] No judgment can rest on such a complaint, as a defendant in default "'admits only facts that are well pleaded.'" [Citations.]" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 392.) However, "*where a cause of action is stated* in the complaint and evidence is introduced to establish a prima facie case[,] the trial court . . . must hear the evidence offered by the plaintiff and must render judgment in his favor for such sum, not exceeding the amount stated in the complaint . . . as appears from the evidence to be just. [Citations.]" (*Taliaferro v. Davis*, at pp. 408-409; accord *Johnson v. Stanhiser*, *supra*, 72 Cal.App.4th at pp. 361-362.)

Even were we to assume the allegations of the complaint are sufficient to state causes of action, we cannot determine whether Concha established an entitlement to damages, since he failed to furnish an adequate record. An appealed judgment is presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) "Consequently, plaintiff has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against plaintiff.

[Citation.]" (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

The absence of any record of the default prove-up hearing is fatal to this appeal. Although Concha submitted several exhibits relating to liability and damages at the hearing, none of the documentary evidence was included in the record on appeal. Nor is there a record of Concha's testimony at that hearing or the basis for the trial court's decision. Concha elected to proceed without a reporter's transcript, did not request a statement of decision, and the settled statement that he proposed describes only the prior hearing on Resovich's motion to quash service of summons.[2] Because Concha failed to carry his burden of providing an adequate record for review, we must affirm the judgment.

The limited record on appeal also reveals a separate basis upon which to affirm the judgment: the complaint did not specify the amount of damages, and hence could not support a default judgment in any amount. (§ 580, subd. (a); *Stein*, *supra*, 181 Cal.App.4th at p. 327.) Section 580, subdivision (a) provides: "The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement

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[2] Concha asserts that he requested a settled statement pertaining only to the hearing on the motion to quash because the court clerk informed him that "the court under no circumstances would settle a statement of the prove-up hearing." To the extent he argues the trial court abused its discretion, there is nothing in the record to support this contention. (See *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 539, fn. 1 ["it is well established that a reviewing court may not give any consideration to alleged facts that are outside of the record on appeal"].)

required by Section 425.11 [for personal injury cases], or in the statement provided for by Section 425.115 [for punitive damages]."[3] The purpose of this section is to provide defaulting parties adequate notice of the maximum judgment that may be

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[3] "The purpose of the statement of damages (under § 425.11 or § 425.115) is to notify a defendant of the amount of damages sought where the law prevents the plaintiff from including a specific amount in the complaint. 'Under Code of Civil Procedure section 425.10, subdivision (b), a complaint in an action for personal injury or wrongful death may not state the amount of damages. Similarly, under Civil Code section 3295, subdivision (e), a complaint may not state the amount of punitive damages sought.' [Citation.]" (*Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 969.) Although Concha sought punitive damages in his complaint, there is no indication in the record that he served Resovich with a statement pursuant to section 425.115.

In his supplemental letter brief, Concha argues that by specifying "the amount demanded, interest, costs and attorney fees" in his request for entry of default and court judgment, and by mailing this document to Resovich more than six months before the default prove-up hearing, he satisfied the underlying objectives of section 580. The difficulty with his contention is that he provided only a statement of total damages claimed, without a breakdown between general and special damages. "The amount of general damages awarded is usually correlated to the special damages proved. Where a default judgment is entered without defendant being informed of the potential special damages, the defendant lacks sufficient knowledge to make the decision of defending against or ignoring plaintiff's claims." (*Jones v. Interstate Recovery Service (*1984) 160 Cal.App.3d 925, 929; *Plotitsa v Superior Court* (1983) 140 Cal.App.3d 755, 761-762 [breakdown of special and general "aids a defendant in evaluating the validity of plaintiff's damage claims with regard to their provability"].)

assessed against them. (*Stein*, *supra*, at p. 325; citing *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826; see also *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 494.)

"Section 580 must be strictly construed. (*Greenup v. Rodman*, *supra*, 42 Cal.3d at p. 826.) In *Becker v. S.P.V. Construction Co., supra*, 27 Cal.3d 489[, 494], the court stated, 'The notice requirement of section 580 was designed to insure fundamental fairness. Surely, this would be undermined if the door were opened to speculation, no matter how reasonable it might appear in a particular case, that a prayer for damages according to proof provided adequate notice of a defaulting defendant's potential liability. If no specific amount of damages is demanded, the prayer cannot insure adequate notice of the demands made upon the defendant.'" (*Stein*, *supra*, 181 Cal.App.4th at p. 325.) Accordingly, "[a] complaint that merely prays for damages according to proof without specifying any amount cannot satisfy section 580 . . . and a default judgment entered under those conditions is void. [Citation].' [Citation.]" (*Id.* at p. 327.)

In determining whether the complaint supports a requested damage award, "courts must look to the prayer of the complaint or to 'allegations in the body of the complaint . . . .'" (*People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 667, citing *National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 418, italics omitted.) In either case, the claimed damages must be stated with specificity. (*Becker v. S.P.V. Construction Co., Inc.*, *supra*, 27 Cal.3d at p. 494 [if "no specific amount of damages" is demanded in the prayer, there is insufficient notice under section 580 unless "a specific amount of damages is alleged in the body of the complaint"].)

Here, the prayer of the complaint sought compensatory damages "according to proof" without specifying a dollar amount, and punitive damages. There also is no specific amount of damages mentioned in the body of the complaint; it merely states that Concha spent "thousands of dollars" hiring attorneys and private investigators to find his daughter. This indeterminate demand for damages does not satisfy the notice requirements of section 580 and cannot support a default judgment in any amount. (*Stein*, *supra*, 181 Cal.App.4th at p. 327.) The trial court's judgment in favor of Resovich was therefore proper and must be affirmed.

DISPOSITION

The judgment is affirmed. Resovich shall not recover costs on appeal because she did not make an appearance.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.