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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PETE CASTELLANOS,

Plaintiff and Appellant,

v.

AGUA DULCE WINERY LLC,

Defendant and Respondent.

B277953

(Los Angeles County
Super. Ct. No. BC563946)

APPEAL from a judgment of the Superior Court of Los Angeles County. John Kralik, Judge. Affirmed.

Zinder, Koch & McBratney and Jeffrey E. Zinder for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith LLP and Jeffry A. Miller and Catherine M. Asuncion; Kuluva, Armijo & Garcia and Meena C. Nachiappan for Defendant and Respondent.

Plaintiff and appellant Pete Castellanos appeals from a judgment entered in favor of defendant and respondent Agua Dulce Winery LLC (Agua Dulce) following a jury trial. In December 2012, Castellanos alleged he suffered personal injuries when he was struck in the leg by the horns of a goat on Agua Dulce's premises. On appeal, Castellanos contends the trial court erred by granting Agua Dulce's motion in limine to preclude testimony by Maria Castellanos, his wife, regarding his pain and suffering, and in failing to instruct the jury on the duty of care owed to children as set forth in California Civil Jury Instruction (CACI) No. 412. Because Castellanos fails to provide an adequate record, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

As alleged in the complaint, Castellanos claims he suffered "severe bodily injury" when a goat on Agua Dulce's premises "rammed" a fence, causing its horn to protrude through the fence and strike him in the leg. He sued Agua Dulce for damages, asserting causes of action for general negligence and premises liability.

Following trial, the jury returned a verdict in favor of Agua Dulce. They found that Agua Dulce owned the goat, but that the goat did not have an unusually dangerous nature or tendency, and that Agua Dulce was not negligent. On August 2, 2016, the trial court entered judgment in accord with the jury's special

¹ The record before us is limited. The factual and procedural background is drawn from what we can discern from the few documents designated in the "Appellant's Appendix" and the "Respondent's Appendix," including the complaint, special verdict, and trial court's judgment.

verdict in favor of Agua Dulce. On September 16, 2016, Castellanos filed a timely notice of appeal.

DISCUSSION

Castellanos Failed to Provide an Adequate Record Demonstrating Any Error by the Trial Court

Castellanos contends the trial court erred in granting Agua Dulce's motion in limine to preclude the testimony of his wife, Maria Castellanos. He contends the trial court's ruling was tantamount to an unauthorized evidentiary sanction for asserting the spousal privilege during discovery. He also argues the trial court prejudicially erred in failing to instruct on the duty of care owed to children under CACI No. 412.² We reject Castellanos' assertions because he failed to provide a record on appeal sufficient for us to perform our appellate function.

A. Standard of Review

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.)

² CACI No. 412 provides: "An adult must anticipate the ordinary behavior of children. An adult must be more careful when dealing with children than with other adults."

B. Motion In Limine

Prior to trial, Agua Dulce filed a motion in limine to preclude Maria Castellanos from testifying about Castellanos's pain and suffering. It contended Castellanos's wife could not testify at trial because his wife asserted the spousal privilege during the discovery stage. Agua Dulce further argued Maria Castellanos's testimony would mislead the jury because she was a physician and the jury would give her testimony more credence as a result.

Castellanos opposed the motion, contending his wife should be allowed to testify to comments made by him in the presence of others and her own observations of his conduct after the incident, which were the subject of questions she answered without objection during her deposition. He further argued that to preclude his wife's testimony because she was a physician would prevent any doctor from giving testimony at trial.

According to Castellanos, the trial court granted Agua Dulce's in limine motion; however, he failed to designate on appeal any record of the trial court's ruling.

“The usual purpose of motions *in limine* is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party.’” (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669.) “The court's ruling on a motion in limine is reviewed for abuse of discretion.” (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1493.) The trial court's “discretion is only abused where there is a clear showing [it] exceeded the bounds of reason, all of the circumstances being considered.’” (*People Ex Rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 640.) On appeal, the appellant has the

burden to establish an abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

Because Castellanos failed to provide a sufficient record, he is unable overcome the presumption that the trial court acted properly in precluding testimony from his wife. There is no reporter's transcript of the motion in limine hearing. There is also no adequate substitute for a reporter's transcript such as a settled or agreed upon statement of the hearing. (Cal. Rules of Court, rules 8.134, 8.137.) Without a reporter's transcript, we do not know whether or in what manner the trial court ruled on Agua Dulce's motion in limine. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 (*Foust*) ["Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]."]; *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion."].) Given the sparse record, we presume the trial court's ruling was correct and affirm it.

Assuming arguendo that the trial court disallowed Castellanos's wife from testifying, the decision was not prejudicial. (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 455 [A " 'miscarriage of justice' " will be declared only if " " "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." ' "].) Castellanos argues that preclusion of his wife's testimony deprived the jury of a complete presentation of the evidence. However, in light of the jury's finding that Agua Dulce was not negligent, Castellanos could not have been prejudiced by the trial court's ruling because the jury never reached the issue of damages. (*Piedra v. Dugan, supra*, 123 Cal.App.4th at pp. 1493–

1494 [no prejudice when trial court excluded evidence of future damages because jury found defendant not liable].)

C. Jury Instruction

In the portion of the record we do have, it demonstrates that Castellanos called Steven Wizan, Agua Dulce's general manager, as a witness. Wizan testified that Agua Dulce is a winery open to the public that also has animals on its premises enclosed by a fence. Although the winery does not encourage families to bring children, Wizan acknowledged that patrons sometimes show up with small children. He further testified that children were allowed to stand next to the fence in order to take pictures or view the animals.

Based on Wizan's testimony, Castellanos requested the trial court instruct the jury on the duty of care owed to children under CACI No. 412. He argued because Agua Dulce knew that children were visiting its premises, it had a duty to design its facility in a manner that would be safer for children by enclosing the animals with more than a single fence. Agua Dulce opposed the jury instruction, contending it was not applicable because CACI No. 412 was to be used when a plaintiff establishes injury to a minor and there was no evidence of any children hurt by the animals. The trial court refused the instruction.

“The propriety of jury instructions is a question of law that we review de novo. [Citation.]” (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 475.) “ “[P]arties have the ‘right to have the jury instructed as to the law applicable to all their theories of the case which were supported by the pleadings and the evidence, whether or not that evidence was considered persuasive by the trial court.’ [Citation.] ‘A reviewing court must review the evidence most favorable to the

contention that the requested instruction is applicable since the parties are entitled to an instruction thereon if the evidence so viewed could establish the elements of the theory presented. [Citation.]’ [Citation.]” [Citation.]’ [Citation.]” (*Ayala v. Arroyo Vista Family Health Center* (2008) 160 Cal.App.4th 1350, 1358, italics omitted.) However, the trial court is not required to give every instruction offered by a litigant. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 579-580.) Irrelevant, confusing, incomplete, or misleading instructions need not be given. (*People v. Saddler* (1979) 24 Cal.3d 671, 681; *LeMons v. Regents of University of California* (1978) 21 Cal.3d 869, 875; *Solgaard v. Guy F. Atkinson Co.* (1971) 6 Cal.3d 361, 370.)

Once again, the adequacy of the appellate record is of paramount importance here. It is apparent from the record that multiple witnesses testified at trial, but we have only been provided with a *partial* reporter’s transcript of one defense witness. Thus, we have no way to assess whether the evidence supported giving the requested instruction. Absent a complete record, we presume the trial court’s ruling was correct. (*Foust, supra*, 198 Cal.App.4th at pp. 186–188.)

In any event, based on the limited record before us, we find no reversible error. (*Soule, supra*, 8 Cal.4th at p. 580 [“Instructional error in a civil case is prejudicial ‘where it seems probable’ that the error ‘prejudicially affected the verdict.’ ”].) The directions for CACI No. 412 state that “This instruction is to be used where the plaintiff seeks damages for injury to a minor.” (CACI No. 412.) This statement is consistent with the elements of a negligence cause of action, which requires a plaintiff to establish a duty on the part of a defendant, in addition to the defendant’s breach of that duty that was both the actual and

proximate cause of the *plaintiff's damages*. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917–918; *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205 [the elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages].) Here, Castellanos did not seek damages for injury to a minor, and therefore this instruction was irrelevant.

DISPOSITION

The judgment is affirmed. Agua Dulce shall recover its costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

HALL, J.*

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