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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

JUSTINE KIRBY,

Plaintiff and Appellant,

v.

AMADOR CUEVAS,

Defendant and Respondent.

B256527

(Los Angeles County
Super. Ct. No. PC052027)

APPEAL from an order of the Superior Court of Los Angeles County. Elia Weinbach, Judge. Affirmed.

Law Offices of Steven J. Horn and Steven J. Horn for Plaintiff and Appellant.

Steiner & Libo, Neil S. Steiner and Axel A. Morales for Defendant and Respondent.

Justine Kirby (appellant) appeals from an order granting respondent Amador Cuevas's (respondent) motion to set aside judgment pursuant to Code of Civil Procedure section 473, subdivision (b).¹ Appellant argues that the trial court abused its discretion in granting the motion because respondent presented no legally admissible or competent evidence that his mental health prevented him from attending trial in November 2013. Further, appellant argues that respondent presented no evidence explaining his five-month delay in filing the motion. We find no abuse of discretion and affirm.

FACTUAL BACKGROUND

On March 6, 2010, a rainy day, appellant slipped and fell at a commercial property in Los Angeles County. The property was being utilized as a Mexican restaurant known as "El Indio Restaurant." Respondent owned the real property free and clear of any encumbrances since the 1970's. At the time of the incident, respondent leased the property to Rafael Ruiz. Neither respondent nor Ruiz had any liability insurance on the real property at the time of appellant's fall.

Appellant was taken away in an ambulance. She suffered serious back injuries and continues to have back pain.

PROCEDURAL HISTORY

On November 30, 2011, appellant filed her complaint for personal injuries against respondent and Ruiz. On December 2, 2011, appellant served her statement of damages in which she claimed in excess of \$3,300,000 in damages. On January 27, 2012, respondent filed his answer to the complaint.

Trial was initially set for February 19, 2013, but was continued twice at respondent's request. The second request to continue trial, which was filed on October 2, 2013, was based upon a letter from Dr. Tapeesh Kansal dated September 18, 2013. The letter stated:

"This is to state that [respondent] is under my care for severe Depression and severe Anxiety stemming from his legal problems. He is

¹ All further statutory references are to the Code of Civil Procedure unless otherwise noted.

unable to make important decisions due to severe Depression and inability to concentrate. He cries very easily and has anxiety attacks frequently. [Respondent] is currently receiving Celexa and Ativan for depression and anxiety. If you have any questions or concerns please feel free to contact my office at the number listed below.”

The trial court granted appellant’s request to continue trial from October 2, 2013, to November 12, 2013.

On October 25, 2013, the trial court granted respondent’s attorney’s motion to be relieved as counsel.

On November 12, 2013, appellant appeared for trial. Respondent failed to appear. A court trial was held with uncontested oral testimony from appellant only. Judgment was rendered in favor of appellant against respondent and Ruiz, jointly and severally, in the amount of \$2,801,110.

Appellant filed and served a notice of entry of judgment. She then obtained a writ of execution and recorded her abstract of judgment with the Los Angeles County Recorder’s Office. Appellant sent instructions to the Los Angeles County Sheriff who recorded a notice of levy (enforcement of judgment) upon respondent’s real property with the Los Angeles County Recorder’s Office.

Shortly after the sheriff’s notice of levy was filed and served, appellant learned that respondent had transferred the commercial real property to his son, without consideration, on or about August 12, 2013. In December 2013, respondent’s son transferred the real property to himself and obtained a loan in the amount of \$195,000 using the property as collateral.

Appellant filed a fraudulent transfer action on January 29, 2014.

On April 21, 2014, respondent filed his motion to set aside the judgment. Respondent argued that he was unable to attend the trial of November 12, 2013, because he had suffered a psychological breakdown that made him unable to function. He was suffering depression and severe anxiety and was under the care of a psychiatrist. After his attorney inexplicably sought to be relieved as counsel shortly before trial,

respondent's depression and anxiety significantly increased. He was unable to concentrate or make decisions. He had uncontrollable emotional outbursts, severe panic attacks and fell into a state where he was unable to leave his bedroom for days at a time. Due to these severe symptoms, respondent stated, he was unable psychologically and physically to appear at trial or even approach the court to explain his condition.

Respondent attached to his motion the September 18, 2013 letter from Dr. Kansal, which respondent had used to obtain a continuance of trial in October 2013.

On May 14, 2013, the trial court issued its ruling granting respondent's motion. The court determined that respondent's motion was proper under the discretionary portion of section 473, subdivision (b), which reads:

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

The court determined that psychological illness is sufficient to support a request for relief under section 473, subdivision (b). In support of this decision, the court cited *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208 [where defendant was weak, ill, feeble, and/or unable to understand the proceedings against him, relief was appropriate under section 473, subdivision (b)].)

The court acknowledged that the more difficult question was whether respondent had presented sufficient evidence to support his contention that his psychological condition was such that he could not meaningfully participate in legal proceedings. However, the court noted that after hearing oral argument it was inclined to find that relief must be granted. The court stated, “[n]otably, pursuant to *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 CA3d 725, 740, a default will be set aside on a relatively weak showing of excusable neglect if there is no prejudice to the plaintiff. In this case, the Court finds any prejudice to Plaintiff is minimal.”

In addition, the trial court noted that “doubtful cases are usually resolved in favor of granting relief.” The trial court quoted *Elston v. City of Turlock* (1985) 38 Cal.3d 227,

233 [“because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default”].) The court concluded that respondent’s showing that he was suffering a psychiatric breakdown at the time of trial was sufficient to meet the standard for relief from judgment.

On May 23, 2014, appellant filed her notice of appeal from the order granting the motion for relief from judgment.

DISCUSSION

I. Standard of review

The standard of review for a ruling on a motion to set aside a judgment under section 473, subdivision (b) is abuse of discretion. (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904.) Under this standard, appellate courts will not disturb a ruling of the trial court unless there is a clear showing of abuse. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) A trial court has abused its discretion when, considering all of the circumstances before it, the court’s ruling exceeded the bounds of reason. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

However, there are limits to the court’s discretion. An abuse of discretion will be found when the trial court exercises its discretion in a manner that is arbitrary, capricious or patently absurd, resulting in a manifest miscarriage of justice. (*Culbertson v. R. D. Werner Co., Inc.* (1987) 190 Cal.App.3d 704, 710.)

II. The trial court did not abuse its discretion

Appellant argues that the court abused its discretion for two reasons: first, that there was an absence of competent or legally admissible evidence to support the motion; and second, that there was no evidence to explain respondent’s five-month delay in filing the motion. As set forth below, we find that the decision of the trial court fell within its broad discretion.

A. Evidence in support of motion

1. Dr. Kansal's letter

a. content

Appellant challenges Dr. Kansal's September 18, 2013 letter because it did not state under penalty of perjury that respondent suffered from any type of mental disability which rendered him unable to attend trial on November 12, 2013, or to engage in his daily activities. In addition, there was no information about how long respondent was Dr. Kansal's patient, when respondent first started seeing Dr. Kansal, when the medications were first prescribed, or anything about respondent's diagnosis. Thus, appellant argues, there was no evidence to support the trial court's leap to the conclusion that respondent suffered a "psychotic breakdown" on the day of trial.

Dr. Kansal's letter is dated approximately two months before the trial date of November 12, 2013. It indicates that respondent is under Dr. Kansal's care for severe depression and severe anxiety. It also states that respondent was unable to make important decisions and unable to concentrate due to his conditions. In addition, it lists the medications that respondent was taking at the time to treat those conditions.

While appellant is correct that the letter does not specifically state that respondent was unable to attend trial, the trial court was permitted to make inferences from the letter. (*Oak Knoll Broadcasting Corp. v. Hudgings* (1969) 275 Cal.App.2d 563, 568 ["An inference, while not in itself evidence, is the result of reasoning from evidence. . . . The crucial question is whether the trial court fairly drew the inference favorable to respondent"].) For example, the trial court was permitted to infer that the conditions described in the letter were ongoing and continued through the time of trial. Appellant cites no case law suggesting that it is mandatory for a letter filed in support of a motion to set aside the judgment to contain certain medical information. Instead, the trial court was permitted to give the letter whatever weight the court felt appropriate in making its discretionary decision.

b. admissibility

Appellant further argues that the letter was classic, inadmissible hearsay and because it was authored almost two months before trial, was remote in time and without foundation as to respondent's condition on the day of trial.

We note that appellant provides no citation to the record indicating that she raised these objections in the trial court.² Appellant provides a citation to a document setting forth appellant's evidentiary objections to respondent's declaration. However, she provides no citation to a page in the record showing any specific evidentiary objections made to Dr. Kansal's letter. We need not consider arguments that are not supported by citations to the record. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; see also *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 796 [reviewing court may disregard evidentiary contentions unsupported by proper page cites to the record].) While the trial court's written ruling states that appellant objected to the court's consideration of the letter, this vague reference does not provide us with sufficient information to consider any specific objection made in the trial court. We therefore consider appellant's evidentiary objections to be forfeited.

2. Respondent's declaration

a. content

Appellant also challenges the sufficiency of respondent's declaration to support the motion to set aside the judgment. Appellant argues that respondent never said that his mental condition prevented him from attending trial on November 12, 2013. Nor did he say that he was unable to participate in the defense of his case, or that he was hospitalized due to mental health issues. Neither he nor his son appeared at trial to explain the alleged problems stemming from respondent's mental health issues. Appellant asserts that

² ““[Q]uestions relating to the admissibility of evidence will not be reviewed on appeal in the absence of a specific and timely objection in the trial court on the ground sought to be urged on appeal.” [Citations.]” (*People v. Waidla* (2000) 22 Cal.4th 690, 717.)

respondent's declaration is devoid of any basic information to support his excuse and that the motion therefore should have been denied.

We disagree that the declaration provided insufficient information for the trial court to grant the motion to set aside the judgment. Respondent declared, under penalty of perjury, that in September 2013 he was under the care of Dr. Kansal for severe depression and severe anxiety, and that he was prescribed medications for this condition. Respondent further declared that in the weeks leading up to the November 12, 2013 trial, he became increasingly anxious and depressed. Dr. Kansal advised him that he was not psychologically or emotionally fit to withstand the pressures and stress of trial. Then, without explanation, respondent's counsel moved the court for an order relieving him as counsel. After his counsel successfully sought to be relieved right before trial, respondent's depression and anxiety significantly increased, making respondent unable to function, concentrate or make decisions. Due to the severity of these symptoms, respondent was psychologically and physically unable to appear for trial or even approach the court to explain this condition. This evidence provides a sufficient basis for a motion to set aside the judgment. (See, e.g., *Kesselman v. Kesselman*, *supra*, 212 Cal.App.2d at pp. 207-208 [defendant entitled to relief from default where his mental condition had deteriorated].)

Appellant makes much of the trial court's use of the term "psychotic breakdown" to describe the symptoms set forth in the evidence. Appellant argues that the Diagnostic and Statistical Manual of Mental Disorders does not recognize a disorder of "psychotic breakdown," and that there was no evidence to support the trial court's conclusion that respondent suffered from such a condition.

We find that the trial court's use of the phrase "psychotic breakdown" does not require reversal. It is clear from reading the ruling that the court was familiar with the evidence and was not attempting to make a medical diagnosis. Instead, the court simply came up with a phrase to sum up that evidence. (See, e.g., *Goodman v. Zimmerman* (1994) 25 Cal.App.4th 1667, 1675-1676 [trial court's use of outdated "insane delusion"

terminology insignificant where it was clear that the court was applying the correct statute].)

b. admissibility

Appellant further argues that all of her evidentiary objections to respondent's declaration should have been sustained. Appellant made written objections to paragraphs 8, 9, 11, 14, and 15 of respondent's declaration.

In paragraph 8, respondent stated that he was suffering from depression and severe anxiety, and in paragraph 9, respondent stated that he was prescribed "a benzodiazepine used to treat panic attacks and depression associated anxiety."

In paragraph 11, respondent stated:

"Dr. Kansal advised me that I was unable to make decisions due to severe depression and severe anxiety and had an inability to concentrate. Dr. Kansal advised me that I was not psychologically or emotionally fit to withstand the pressures and stress of a trial. A true and correct copy of Dr. Kansal's September 18, 2013 letter that Dr. Kansal personally provided to me concerning my psychological condition is attached hereto as Exhibit A."

In paragraph 14, respondent stated:

"My depression and associated anxiety significantly increased, including crippling panic attacks, when only two weeks prior to trial, Mr. Weisberg abandoned my defense. As a result, I was unable to function, concentrate or make decisions. I had uncontrollably emotional outbursts or crying, experienced severe panic attacks and fell into a mental and physical state such that I was unable to leave my bedroom for days at a time."

In paragraph 15, respondent stated:

"Due to severity of my depression, I was psychologically and physically unable to appear for trial or even approach the Court and explain [t]his condition."

Appellant objected to all of the above statements on the grounds of lack of foundation, lack of personal knowledge, calls for expert opinion, and hearsay.

Appellant argues that these objections were appropriate because respondent was not competent to testify about his medical or psychological condition and the trial court committed reversible error by overruling them.

We review the trial court's evidentiary rulings for abuse of discretion. (*People v. Waidla, supra*, 22 Cal.4th at p. 717.) As with all discretionary rulings, evidentiary rulings will not be disturbed on appeal unless there is a showing that the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

We find no such abuse of discretion here. First, we note that appellant has failed to elaborate on her argument that her objections should have been sustained. She cites no case law in support of her position and provides no reasoned argument supporting each individual objection. Thus, we may consider these evidentiary issues to be forfeited. (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799 [“An appellant must provide an argument and citation to legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong”].)

However, even if appellant had not forfeited these evidentiary issues on appeal, we would find no abuse of discretion. While the trial court did not articulate its rationale for overruling appellant's objections, we find that sufficient authority exists for the admission of the statements in question. Respondent had personal knowledge of his physical and mental condition, because he personally experienced these symptoms. (See, e.g., *People v. Lewis* (2001) 26 Cal.4th 334, 356 [personal knowledge is “a present recollection of an impression derived from the exercise of the witness' own senses”].) Such personal knowledge provides a foundation for his testimony. (Evid. Code, § 403, subd. (a)(2).) In addition, a witness may testify to his own medical condition as a fact known to himself. (See, e.g., *Frederick v. Federal Life Ins. Co.* (1936) 13 Cal.App.2d 585, 590 [“a witness may testify whether he has had a particular disease as a matter of fact known to himself, and not as a matter of opinion”]; see also *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 528 [“lay witnesses are generally competent to testify as to their own knowledge of their diseases, injuries, or physical condition”].)

In sum, we conclude that the evidence presented in support of the motion to set aside the judgment was competent and admissible.

B. Five-month delay

Appellant further argues that no evidence was presented to explain the five-month delay from the time the judgment was entered to the time that respondent filed his motion to set aside the judgment. Appellant argues that the trial court should have required such evidence.

Appellant acknowledges that under section 473, subdivision (b), a motion for discretionary relief must be filed within a reasonable time, but in no case exceeding six months. However, appellant argues that delays of over three months must be explained. (Citing *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 532.) Even if such a requirement exists, respondent presented sufficient evidence to satisfy the question of why it took him five months to file the motion. Judgment was entered on November 13, 2013. Respondent's new counsel substituted in to the case on February 11, 2014. Respondent's new counsel submitted a declaration to the court stating that, on or about March 6, 2014, he spoke with Dr. Kansal in an effort to get a declaration reiterating the facts that Dr. Kansal had stated in his letter of September 2013. At oral argument, respondent's counsel indicated that he attempted several times to get the declaration without success. On March 27, 2014, respondent's counsel appeared before the trial court on an ex parte application for an order to shorten the notice period for respondent's motion for relief from judgment. On April 21, 2014, the motion was filed. Respondent's counsel presented this evidence to the trial court for consideration on the issue of timing. And while respondent's counsel acknowledged that these actions did not occur within three months of the judgment, the trial court agreed that "[i]t wasn't five months is what you're saying."

Respondent's arguments as to the timeliness of his motion were accepted by the trial court. The court's decision was well within the bounds of reason, and does not constitute an abuse of discretion.

DISPOSITION

The order is affirmed. Respondent is awarded costs of appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT