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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ALICE MEDINA et al.,

Plaintiffs and Appellants,

v.

ALLEN SMUDDE et al.,

Defendants and Respondents.

B283780

(Los Angeles County
Super. Ct. No. BC643486)

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

G. Marshall Hann for Plaintiffs and Appellants.

Ford, Walker, Haggerty & Behar, James D. Savage,
Katherine M. Harwood and Adam C. Hackett for Defendants and
Respondents.

INTRODUCTION

Plaintiffs Alice and John Medina appeal the trial court's judgment sustaining defendants Allen and Kelly Smudde's demurrer without leave to amend. We affirm because plaintiffs failed to adequately brief this court on how their causes of action were viable.

FACTS AND PROCEDURAL BACKGROUND

Because this case comes to us on demurrer, we base our recitation of the facts on the operative complaint.

1. Cancelled Dental Appointment

Defendants are dentists, who share a dental office. On August 1, 2016, plaintiff Alice Medina called defendants' office and scheduled a dental appointment for her husband, plaintiff John Medina. On September 1, 2016, the defendants' office manager left a voice message with Mrs. Medina, requesting her husband's social security number. In response, plaintiffs provided the dental office with Mr. Medina's insurance member number. The office manager advised Mrs. Medina that her husband's social security number was required to keep the appointment, and verify insurance benefits and coverage for billing purposes. Mrs. Medina called her insurance provider, who told her that the social security number was not required to verify benefits and that coverage and benefits had already been verified. That same day, the office manager advised Mrs. Medina that without her husband's social security number, the appointment was cancelled. No dental services were ever provided to plaintiffs by defendants.

2. Plaintiffs' Lawsuit

In December 2016, plaintiffs filed a complaint against defendants based on their refusal to provide dental services

without Mr. Medina's social security number. In March 2017, defendants demurred and moved to strike the complaint. Plaintiffs subsequently filed the first amended complaint on March 23, 2017. The first amended complaint alleged eight causes of action: (1) invasion of privacy, (2) fraud/deceit, (3) suppression of fact fraud/deceit, (4) negligent misrepresentation, (5) unfair business practices, (6) negligence, (7) conspiracy, and (8) declaratory relief.

3. *Defendants' Demurrer*

Defendants demurred to the first amended complaint. They argued that plaintiffs failed to state a claim for invasion of privacy and conspiracy to invade their privacy because no private information was obtained. They asserted that plaintiffs failed to allege fraud and misrepresentation because there were no allegations to show inducement to act, detrimental reliance, or damages. Defendants argued the unfair business practices claim failed because plaintiffs did not allege fraud and never articulated the existence of unlawful conduct. The negligence claim failed because defendants asserted plaintiffs did not allege facts showing duty, breach, or damages.

Plaintiffs opposed the demurrer in a two-page memorandum, which failed to address any of the points raised by defendants. The brief did not even analyze the elements of any of the causes of action. Plaintiffs merely restated the factual basis for their complaint (summarized above). Without authority, they merely stated that the cause of action for declaratory relief was sufficiently alleged because paragraph 109 of the complaint conclusorily stated that an "actual controversy has arisen and now exists between [p]laintiffs and [d]efendants." They failed to

assert any basis for leave to amend. Defendants' reply to the opposition pointed out the deficiencies in plaintiffs' briefing.

4. *The Trial Court Sustained the Demurrer Without Leave to Amend*

On May 19, 2017, the trial court held a hearing and sustained the demurrer without leave to amend. It then dismissed the case with prejudice. We do not have a transcript of those proceedings but have been provided with the court's minute order and defendants' notice of ruling.

According to the notice of ruling, the trial court determined Civil Code section 1798.85, subdivision (b) applied. Section 1798.85 generally lists prohibited actions with respect to social security numbers. Subdivision (b) states: "This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes." (Civ. Code, § 1798.85, subd. (b).) The notice of ruling further stated the court "found no evidence of fraud, damages, or misrepresentation."

The court's minute order indicated that the demurrer was sustained because plaintiffs failed to allege fraud or damages. The notice of ruling did not identify Civil Code section 1798.85.

5. *Motion for Reconsideration*

On May 30, 2017, plaintiffs moved the court to reconsider its ruling. Plaintiffs argued that the court improperly applied Civil Code section 1798.85, subdivision (b) to their case because they did not allege the social security number was going to be used for an administrative purpose. Although plaintiffs acknowledged that motions for reconsideration were limited to cases involving law or facts not previously considered by the

court, plaintiffs did not identify any new law or facts for the court to consider. Defendants opposed the motion.

On July 6, 2017, the court heard the motion for reconsideration and denied it as plaintiffs failed to raise new facts or law. Plaintiffs appealed.

DISCUSSION

Plaintiffs “claim the trial court erroneously granted the [d]emurrer without leave to amend and erroneously dismissed [p]laintiffs’ complaint with prejudice.”

We review the demurrer de novo to determine whether plaintiffs’ complaint alleges sufficient facts to state a claim. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879 (*Cantu*)). Plaintiffs have “the burden to show either the demurrer was sustained erroneously or that to sustain the demurrer without leave to amend constitutes an abuse of discretion.” (*Stanson v. Brown* (1975) 49 Cal.App.3d 812, 814.) “To establish that [they] adequately pleaded even one of [the] causes of action, [plaintiffs] must show that [they] pleaded facts sufficient to establish every element of that cause of action. . . . [Plaintiffs] bear[] the burden of overcoming all of the legal grounds on which the trial court sustained the demurrer[.]” (*Cantu*, at p. 880.) An appellant has the burden of overcoming the presumption of correctness, even when the appellate court is required to conduct a de novo review. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

Despite these well-established principles regarding an appellant’s burden, plaintiffs’ appellate brief is devoid of any meaningful analysis of the case (just as their opposition to the demurrer in the trial court lacked any functional argument). Plaintiffs failed to analyze any of their causes of action or explain

how they alleged sufficient facts to support the elements of those causes of action. We observe the crux of plaintiffs' factual allegations was that defendants required them to provide a social security number in order to schedule a dental appointment. Particularly given that Civil Code section 1798.85, subdivision (b) expressly allows for the use of social security numbers in this manner, plaintiffs needed to explain how defendants' alleged actions were tortious in order to proceed. Plaintiffs failed to satisfy their burden. They did not suggest how they could amend the complaint to state a viable claim. Their case and this appeal border on frivolous.

To the extent plaintiffs argue the trial court failed to specify its reasons for sustaining the demurrer, the record indicates otherwise. The trial court provided its rationale—failure to allege fraud and damages—in its minute order. (*Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 275 [minute order sufficient statement of grounds for decision].) Even so, plaintiffs' briefing failures below and on appeal warrant affirmance.¹

¹ Plaintiffs mention the motion for reconsideration in their brief under the statement of appealability but we do not address it as they make no assertions regarding the court's order denying the motion.

DISPOSITION

We affirm the judgment. Defendants Allen Smudde and Kelly Smudde are awarded costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.*

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