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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GURPREET SINGH,

Plaintiff and Appellant,

v.

RATHAUR SUBWAY, INC.,

Defendant and Respondent.

B268726

(Los Angeles County
Super. Ct. No. BS149295)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Affirmed.

Law Offices of Amy Ghosh and Amy Ghosh for Plaintiff and Appellant.

Collins Law Group and Marc A. Collins for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Gurpreet Singh¹ brought and lost a wage and hour case against his former employer, defendant and respondent Rathaur Subway, Inc. (Rathaur Subway), before the California Labor Commissioner, alleging Rathaur Subway owed Gurpreet for unpaid regular and overtime wages; premiums for overtime, meal and rest breaks; and penalties. Gurpreet appealed to the Superior Court, which heard the case de novo, as provided for in Labor Code section 98.2, subdivision (a).² Gurpreet now appeals from a judgment of the Superior Court, following a bench trial. The trial court explained its reasoning and supported it with reference to substantial evidence in a 17-page statement of decision. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Superior Court conducted a bench trial on June 22, 2015. No court reporter was present. Following trial, the parties filed a joint summary of trial testimony, and each side filed post-trial briefs (although only plaintiff's post-trial brief is included in the record on appeal). The trial court rendered its tentative statement of decision on August 6, 2015. It entered judgment on

¹ Because appellant and many of the witnesses have the same last name, we refer to them by their first names, as do the parties.

² In such an appeal, the Superior Court disregards the Labor Commissioner's decision, and the proceedings are " ' ' ' ' ' a trial anew in the fullest sense.' " " " " (*Murphy v. Kenneth Cole Productions, Inc.*, (2007) 40 Cal.4th 1094, 1116 (*Murphy*).)

September 16, 2015. The judgment attached and incorporated the statement of decision, which had by that time become final.

The trial court found that Gurpreet was an undocumented immigrant who arrived in the United States in approximately February 2012. He was arrested and detained at the border, where he remained for approximately one month, until his uncle, Jagdish, secured his release by posting a bond costing \$7,000, and brought him home to live with Jagdish, Jagdish's wife, Babal, and their sons, Gurvinder and Varinder.

Gurvinder was president of Rathaur Subway, which operated a Subway store, and Varinder was supervisor of the store's employees. Gurpreet promised to repay the cost of the bond by working at the Subway store. In addition to feeding and housing Gurpreet, the family also paid \$3,344 to third parties to cover certain of Gurpreet's expenses. The cost of the bond and the dollar amount of the expense payments were undisputed.

Gurpreet worked at the store. The parties disputed the amount of hours he worked and a number of other issues. These issues were resolved by the trial court in respondent's favor, as discussed below.

STANDARD OF REVIEW

Gurpreet misunderstands the standard of review in this proceeding. He asserts, incorrectly, that we "must independently determine the construction and effect of the facts presented to the trial judge as a matter of law." Unlike the trial court's *de novo* review of the Labor Commissioner's decision, however, we apply our ordinary standards of review with respect to the trial court's judgment.³

³ *Murphy, supra*, 40 Cal.4th at page 1116.

“The most fundamental rule of appellate review is that an appealed judgment or order is *presumed to be correct*.”⁴ “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown’ ” by the appellant.⁵

“In general, in reviewing a judgment based upon a statement of decision following a bench trial, ‘any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]’ [Citation.] In a substantial evidence challenge to a judgment, the appellate court will ‘consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]’ [Citation.] We may not reweigh the evidence and are bound by the trial court’s credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment.”⁶

“The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its

⁴ Eisenberg, California Practice Guide: Civil Appeals and Writs (The Rutter Group 2017) paragraph 8:15, page 8-5; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631 (*Winograd*); *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).

⁵ *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Winograd, supra*, 68 Cal.App.4th at page 631; *Cahill, supra*, 194 Cal.App.4th at page 956.

⁶ *Estate of Young* (2008) 160 Cal.App.4th 62, 75-76 (*Young*).

statement of decision rendered after a nonjury trial.”⁷ “The court’s statement of decision is sufficient if it fairly discloses the court’s determination as to the ultimate facts and material issues in the case.”⁸ “ ‘Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.’ ”⁹

On the other hand, “[q]uestions of statutory interpretation, and the applicability of a statutory standard to undisputed facts, present questions of law, which we review de novo. [Citation.]”¹⁰

DISCUSSION

The first issue addressed by the trial court was: “What wages, if any, is Plaintiff owed for his work at Rathaur Subway?” As discussed below, on the basis of substantial evidence, the trial court determined that the answer was none, because the amount of money expended on Gurpreet’s behalf for the bond and his other expenses greatly exceeded the dollar value of the wages he earned by working at the store.

⁷ *SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.

⁸ *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380.

⁹ *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 342.

¹⁰ *Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 604.

At trial, the parties disputed the number of hours Gurpreet worked at the store. Gurpreet was released from detention in Arizona on March 12, 2012. He testified that he began working at the store, assisting customers, two days later, on March 14, 2012. As the trial court explained in its statement of decision, it did not believe this testimony – for good reason – and instead concluded that Gurpreet did not begin working at the store until October 24, 2012. It based this credibility determination on the following reasons, among others: (a) Jagdish testified Gurpreet could not speak, write or read English when he first arrived and therefore was unable to help customers; (b) Jagdish, Gurvinder, and Varinder testified consistently that Gurpreet did not begin working until October 24, 2012; (c) the payroll records demonstrated Gurpreet did not begin working until October 24, 2012; (d) the court did not find it credible that Gurpreet could have worked in the store as early as March 14, 2012, given his lack of English language proficiency at that time, and noted that even at the time of trial Gurpreet had difficulty testifying in English, and (e) the trial court did not believe Gurpreet’s testimony that he was able to work alone in the store and communicate with the customers in Spanish because there was no evidence that all of the customers in the store, which was located in Inglewood, spoke Spanish.

The trial court’s conclusion that Gurpreet testified falsely concerning the date he started to work at the store influenced it to reject other aspects of Gurpreet’s testimony that also were inconsistent with payroll records and/or the testimony of his relatives, such as whether he took meal breaks, the number of hours he worked per day, how many days per week he worked,

and so on. It also rejected as biased and untruthful the testimony of two witnesses.

Gurpreet's principal challenge to the judgment is his disagreement with the trial court's credibility determinations, especially its rejection of critical portions of Gurpreet's testimony. But making credibility determinations, as noted above, is the sole province of the trial court as the trier of disputed facts. We do not re-try cases; we are bound by the trial court's credibility determinations.¹¹

The trial court found that "Gurpreet was paid \$10,344 for his wages during the period from October to December 2012." That amount consisted of the \$7,000 payment for the bond, plus \$3,344 in other payments made on his behalf. As previously noted, the cost of the bond and the amounts of these payments were not disputed. During the same period, the court found, Gurpreet worked hours for which he earned wages totaling \$1,709.01.¹² Thus, the trial court found that Rathaur Subway had *overpaid* wages to Gurpreet in the amount of \$8,634.99. It also found he was not denied mealtime breaks or discouraged from taking them. These determinations are supported by substantial evidence, namely the testimony and other evidence referred to in the statement of decision.

¹¹ *Young, supra*, 160 Cal.App.4th at page 76. We reject as specious and contrary to the record Gurpreet's assertion in his opening brief that the trial judge did not find his testimony credible "just because of his limited English speaking ability."

¹² In calculating this amount, the trial court accepted Gurpreet's testimony that his agreed wage rate was \$9 per hour. It was undisputed that the applicable minimum wage was \$8 per hour.

At trial, and on appeal, Gurpreet argues, as he did in his post-trial brief, that wages are unpaid unless they are paid on or before the employees' regular payday, but the trial court found, on the basis of substantial evidence, that Rathaur Subway had timely paid Gurpreet because Jagdish paid for the \$7,000 bond in advance of any work performed by Gurpreet, and the cost of the bond well exceeded the total amount of wages earned by Gurpreet.

Gurpreet also argues, as he did in his post-trial brief, that Rathaur Subway was not entitled to treat all the payments made to Gurpreet as wages, and that the payments should instead be considered gifts and loans. But the trial court made contrary findings supported by substantial evidence:

“While it is unusual for wages paid to an employee to be in the form of payment for a bond, payment for bus tickets and checks written out to third-parties, in this case it is undisputed that Gurpreet was undocumented and did not have a social security number. Accordingly, Rathaur Subway could not pay Gurpreet through the normal payroll mechanism. While the court finds that under the Labor Code Rathaur Subway still had to pay Gurpreet wages under California law consistent with California's minimum wage, the court finds that the type of payments made in this case may be applied as wages paid to Gurpreet. Indeed, Gurpreet in his own testimony stated that he requested that the various payments and checks be made for him, and that he expected to repay these amounts. According to the joint summary of the testimony prepared by the parties, Gurpreet testified as follows: ‘Gurpreet did not intend for these payments to be gifts or loans. Gurpreet always

intended to pay them back with work.’ [Citation.] In light of Gurpreet’s own testimony that these payments were paid in exchange for wages, the court finds that Rathaur Subway has satisfied its obligation to pay wages to Gurpreet.”

The balance of the arguments asserted by Gurpreet¹³ are based on the unfounded premises that (1) Gurpreet was underpaid, or (2) that the payments were gifts – which are contrary to the trial court’s well-supported factual findings that Gurpreet was *overpaid* for his time, including time for mealtime breaks and overtime, and that the parties intended that the payments would be repaid with Gurpreet’s labor. Accordingly, Gurpreet’s additional arguments are without merit.

Gurpreet contends the trial court’s findings are erroneous, but he has not carried his burden of demonstrating error through reasoned argument and citations to relevant authority. “One cannot simply say the court erred, and leave it up to the appellate court to figure out why.”¹⁴

¹³ E.g., that he was owed unpaid wages at the time of his supposed discharge, or he is owed a penalty for unpaid wages, or he is owed liquidated damages for unpaid wages, or he is owed wages for missed meal periods, or that he should not be disadvantaged by underpayment because of his undocumented status.

¹⁴ *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368

DISPOSITION

For the reasons discussed above, we affirm the judgment.
Rathaur Subway, Inc. may recover its costs on appeal.

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CURREY, J. *

We concur:

EDMON, P. J.

LAVIN, J.

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