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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANTHONY REYDER,

Plaintiff and Appellant,

v.

ROBERT SHORR,

Defendant and Respondent.

B230783

(Los Angeles County  
Super. Ct. No. SC105688)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Joseph S. Biderman, Judge. Affirmed.

Mark Ravis and Karen Travis for Plaintiff and Appellant.

Barbara M. Reardon for Defendant and Respondent.

Plaintiff, Anthony Reyder, appeals a summary judgment. The judgment was entered after the trial court ruled the suit against defendant, Robert Shorr, M.D., was untimely. We agree with defendant that the summary judgment must be affirmed in light of plaintiff's failure to provide an adequate record for this court to assess error.

Plaintiff, as the appellant, has an affirmative obligation to provide an adequate record so that we may assess whether the trial court erred. We never presume error and a presumption of correctness must be accorded to the trial court's ruling. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 88.) The Court of Appeal has held: "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 . . . ." [Citation.] (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712, orig. italics; see *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.) In the absence of a complete record, a reviewing court will not presume error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *In re Kathy P.* (1979) 25 Cal.3d 91, 102; *Interinsurance Exchange v. Collins*, (1994) 30 Cal.App.4th 1445, 1448; *Rossiter v. Benoit, supra*, 88 Cal.App.3d at p. 712.)

We raised the record's adequacy with the parties by order dated July 14, 2011. On November 1, 2011, we granted plaintiff's motion to augment the record with several documents. However, plaintiff neglected to provide us with the following documents: the complaint; the parties' separate statements; and his opposition to the summary judgment motion. This does not constitute an adequate record. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46; *Hernandez v. California Hosp. Med. Ctr.* (2000) 78 Cal.App.4th 498, 502.)

Plaintiff has also chosen to proceed without a reporter's transcript or a suitable substitute of the summary judgment hearing. In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 273-274 [transfer order]; *Maria P. v. Riles, supra*, 43 Cal.3d at pp. 1295-1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564,

574-575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.*, *supra*, 25 Cal.3d at p. 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication]; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1672 [transcript of judge's ruling on an instruction request]; *Vo v. Las Virgenes Municipal Water Dist.*, *supra*, 79 Cal.App.4th at p. 447 [trial transcript when attorney fees sought]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Interinsurance Exchange v. Collins*, *supra*, 30 Cal.App.4th at p. 1448 [monetary sanctions hearing]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc. Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385-386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit*, *supra*, 88 Cal.App.3d at pp. 713-714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71-73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter's transcript or settled statement as to offers of proof]; *Wetsel v. Garibaldi* (1958) 159 Cal.App.2d 4, 10 [order confirming arbitration award].)

The judgment is affirmed. Defendant, Robert Shorr, M.D., is awarded his costs on appeal from plaintiff, Anthony Reyder.

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TURNER, P. J.

I concur:

KRIEGLER, J.

MOSK, J., Concurring

I concur.

As to the record, the superior court file is available, and this court could have judicially noticed the documents necessary from the record or augmented the record, as can be done, to avoid an injustice. As to the transcript of the oral proceeding, the trial court said it followed its tentative ruling. There is no suggestion that at the hearing any evidentiary rulings were made, or that there were any concessions, or that anything of any significance to our consideration occurred. And no party relied on anything that occurred at that proceeding. (Cal. Rules of Court, rules 8.120, subd. (b), 8.130, subd. (a)(1), rule 8.163.) The trial court did not allude to any of the documents that are not in the record. As we review a summary judgment de novo, we can look at the record and determine if there is a triable issue of fact. In this case, there appears to be a tenable argument that there was a triable issue of fact as to the accrual of the statute of limitations, but I do not opine upon that matter.

In this case, appellant was given the opportunity to provide what was missing and failed to do so or give any explanation as to why the material was missing or was unnecessary. Because of that, I concur.

MOSK, J.