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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SAMUEL FIRESTONE,

Plaintiff and Appellant,

v.

CSF TAX SOFTWARE, INC., et al.,

Defendants and Respondents.

2d Civil No. B272255  
(Super. Ct. No. 56-2014-00458143-CU-  
WT-VTA)  
(Ventura County)

In this action alleging employment discrimination and wrongful termination of employment, Samuel Firestone appeals on the clerk's transcript from the judgment entered in favor of respondents CFS Tax Software, Inc. (CFS), and Theodore Sullivan.<sup>1</sup> Appellant contends that the trial court abused its discretion in denying his request to continue the trial, in not allowing him additional time to retain replacement counsel before ruling on respondents' discovery motions, and in awarding respondents their reasonable attorney fees. We affirm.

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<sup>1</sup> CFS was erroneously sued as CSF Tax Software, Inc. Its true name is CFS (not CSF) Tax Software, Inc.

### *Factual and Procedural Background*

CFS hired appellant as a tax consultant when he was 58 or 59 years old. In July 2014, when appellant was 62 years old, CFS terminated his employment. In September 2014 appellant filed a complaint against respondents under the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq., hereafter FEHA) and the Unfair Practices Act (Bus. & Prof. Code, § 17000 et seq.). The complaint alleged that respondents had discriminated against appellant because of his age and Jewish religion, had retaliated against him for complaining about the discrimination, had committed unfair business practices, and had wrongfully terminated his employment in violation of public policy.

When appellant filed the complaint, he was represented by Richard N. Grey. In July 2015 Grey filed a motion to be relieved as counsel of record. In support of the motion, Grey declared that, “[a]round the beginning of 2015,” he and appellant had come “to a mutual understanding and agreement that [appellant] would seek and retain new counsel in this matter and that [Grey] would be substituted out of the case as his attorney of record in favor of his successor counsel.” On August 27, 2015, the trial court granted Grey’s motion to be relieved as counsel of record. Both Grey and appellant appeared at the hearing on the motion.

On September 22, 2015, respondents served and filed three discovery motions. A hearing on the motions was set for October 22, 2015. Appellant did not respond to the motions and did not appear at the hearing. The court granted the motions. It imposed sanctions of \$1,417.50 against appellant.

A court trial was scheduled for February 22, 2016. On that date respondents filed a motion for judgment on the pleadings. Appearing in propria persona, appellant requested that the trial be continued. The trial court denied the request and granted respondents' motion for judgment on the pleadings.

On March 11, 2016, judgment was entered in respondents' favor. At a hearing conducted on May 4, 2016, the trial court orally granted respondents' postjudgment motion for attorney fees and costs. It requested that respondents' counsel prepare a formal order. On May 6, 2016, Andrew M. Wyatt, acting as appellant's counsel, filed a notice of appeal "from the final judgment . . . entered in this case on March 11, 2016." On May 19, 2016, the trial court signed an order awarding respondents costs of \$3,800.75 and attorney fees of \$51,485.25. The order provided that the award shall be "deemed incorporated into the Judgment filed on March 11, 2016." Appellant did not file a notice of appeal from the order awarding attorney fees and costs.<sup>2</sup>

At all of the above court proceedings, a court reporter was not present.

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<sup>2</sup> The order awarding attorney fees and costs is arguably a postjudgment order for which a separate notice of appeal must be filed. "A postjudgment order which awards or denies costs or attorney's fees is separately appealable[] [citations], and if no appeal is taken from such an order, the appellate court has no jurisdiction to review it. [Citation.]" (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46, fn. omitted.) Respondents have not raised this issue. Since the trial court deemed the order awarding attorney fees and costs to be incorporated into the judgment, we assume that we have jurisdiction to review the order in conjunction with our review of the judgment.

*Denial of Request for Continuance of the Trial*

Appellant contends that the trial court abused “its discretion by denying [his] request for [a] continuance[] to obtain legal counsel.” (Bold and Capitalization omitted.) “A trial court has great discretion in the disposition of an application for a continuance. Absent a clear abuse of discretion, the court’s determination will not be disturbed. [Citation.]” (*Estate of Smith* (1973) 9 Cal.3d 74, 81; see also *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1007 [“We deal . . . with a situation which Witkin, the leading text writer on California law, has succinctly assessed as follows: ‘The factors which influence the granting or denying of a continuance in any particular case are so varied that the trial judge must necessarily exercise a broad discretion’”].) An abuse of discretion “is found only where no reasonable basis for the court’s action can be shown. [Citation.]” (*Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 621.) “The burden rests on the complaining party to demonstrate from the record that such an abuse has occurred. [Citation.]” (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 985.)

The record is inadequate to determine whether the trial court abused its discretion in denying appellant’s request for a continuance of the trial. The request was orally made and orally denied. There is no reporter’s transcript of the proceedings. Nor is there an agreed or settled statement in lieu of a reporter’s transcript. (See Cal. Rules of Court, rules 8.130(h), 8.134, 8.137.) The only mention in the record of the continuance is the following notation in the court minutes: “Plaintiff’s request for continuance of trial is denied.”

“As the party challenging [the denial of the request for a continuance], [appellant] has an affirmative obligation to

provide an adequate record so that we may assess whether the trial court abused its discretion. [Citations.] We cannot presume the trial court has erred.” (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.) “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.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Because appellant failed “to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. [Citations.]” (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141.)

#### *Respondents’ Discovery Motions*

Appellant argues that the trial court abused its discretion because it “did not take . . . into consideration” Richard Grey’s withdrawal as counsel “when it ruled on [respondents’ discovery] motions without giving Appellant additional time to seek assistance from another attorney.” Appellant asserts, “The court heard the motions on October 22, 2015 even though Appellant had not yet replaced his attorney and requested additional time to find someone to take the case.” The alleged request for additional time is not supported by citation to the record. An appellant “must cite to the record showing exactly where the objection was made. [Citations.] When an appellant’s brief makes no reference to the pages of the record where a point can be found, an appellate court . . . can simply deem the contention to lack foundation and, thus, to be forfeited. [Citations.]” (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800.)

The trial court did not abuse its discretion in ruling on the discovery motions without affording appellant additional time to retain new counsel. The motions were served by mail on appellant personally. They stated that a hearing would be conducted on October 22, 2015. The record does not include any response by appellant to the motions. The court minutes show that he failed to appear at the hearing on the motions. If appellant wanted additional time to retain new counsel, he should have attended the hearing and asked for additional time.

*Attorney Fees Incurred by Respondents in the Trial Court*

Appellant claims that the trial court abused its discretion for the following reasons: “[T]he court awarded attorney fees in a FEHA case where it is reserved for extraordinary circumstances. Since Appellant was in pro per for part of the case, the court should have denied the motion for attorney fees. Respondent[s] sought over \$51,000 in attorney fees which was excessive given how little was done by them in the case. Since the motion to compel [i.e., respondents’ discovery motions] accounted for only \$1,472.00, there was no way Respondent[s] [were] entitled to such fees.”

The attorney fees claim is forfeited because it is not supported by meaningful argument with citations to pertinent authority and facts in the record. “To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ [Citations.] Hence, conclusory claims of error will fail.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408; see also

*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.)

*Attorney Fees Incurred by Respondents on Appeal*

Respondents request that they “be awarded costs and attorneys’ fees for this appeal under Government Code section 12965(b).” This is the same statute under which the trial court awarded costs and attorney fees to respondent. “Government Code section 12965, subdivision (b), governs cost awards in FEHA actions, allowing trial courts discretion in awards of both attorney fees and costs to prevailing FEHA parties. . . . [I]n awarding attorney fees and costs, the trial court’s discretion is bounded by the rule [that] an unsuccessful FEHA plaintiff should not be ordered to pay the defendant’s fees or costs unless the plaintiff brought or continued litigating the action without an objective basis for believing it had potential merit.” (*Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 99-100.)

Pursuant to rule 8.278(a)(1) of the California Rules of Court, we will award respondents their costs on appeal. We leave the matter of appellate attorney fees to the sound discretion of the trial court. Upon issuance of the remittitur, respondents may serve and file a motion for reasonable appellate attorney fees pursuant to Government Code section 12965, subdivision (b). For purposes of that motion, we find that appellant did not have an objective basis for believing that his appeal had potential merit.

*Disposition*

The judgment, including the order awarding attorney fees and costs to respondents, is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.



Roger Picquet, Judge (Retired)\*  
and  
John Nguyen, Judge (Retired)\*  
Superior Court County of Ventura

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Samuel Firestone, in pro. per.; Law Offices of Andrew  
M. Wyatt and Andrew M. Wyatt for Plaintiff and Appellant.  
Silver & Arsht, Samuel J. Arsht and Marsha C.  
Brilliant for Defendants and Respondents.

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\* Retired judge of the San Luis Obispo Sup. Ct. assigned by the Chairperson of the Judicial Council.

\* Retired judge of the Orange County Sup. Ct. assigned by the Chairperson of the Judicial Council.