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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TERRANCE MARSH,

Plaintiff and Appellant,

v.

GARFIELD BEACH CVS, L.L.C.,

Defendant and Respondent

B276598

(Los Angeles County
Super. Ct. No. BC589860)

APPEAL from an order of the Superior Court of
Los Angeles County, Gregory Wilson Alarcon, Judge. Affirmed.
Terrance Marsh, in pro. per., for Plaintiff and Appellant.
Manning & Kass, Ellrod, Ramirez, Trester and Robert P.
Wargo for Defendant and Respondent.

Terrance Marsh, representing himself as he did in the trial court, appeals the order of dismissal entered after the court sustained without leave to amend the unopposed demurrer of Garfield Beach CVS, L.L.C. (incorrectly sued as CVS Pharmacy, Inc.) to his first amended complaint, which alleged he had been unlawfully detained and falsely accused of attempted theft at a CVS retail store in South Los Angeles based on CVS's racially discriminatory corporate policies. With a sparse record and no specificity, Marsh argues the trial court erred (and violated his right to due process) by ruling his first amended complaint failed to state any causes of action and abused its discretion in denying him leave to file a second amended complaint. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Marsh's First Amended Complaint

On July 30, 2015 Marsh filed a complaint and on April 22, 2016 a first amended complaint alleging that on May 22, 2015, while shopping at a CVS pharmacy on South Vermont Avenue in Los Angeles, he was confronted by four CVS employees (referred to as "agents" in the pleading) who unlawfully detained him and prevented him from leaving the building by loudly accusing him of attempting to steal from the store.¹ Marsh, an African-

¹ Marsh's notice designating record on appeal did not include his first amended complaint or CVS's demurrer. CVS did not designate any additional documents to include in the clerk's transcript. (See Cal. Rules of Court, rule 8.122(a)(2).) After CVS filed its respondent's brief arguing Marsh had failed to provide an adequate record on appeal, Marsh moved to augment the record to include all "oral and written records," without identifying, let alone attaching, any documents he wished to add to our record, as required by California Rules of Court, rule 8.155(a)(2). The motion to augment was denied. We now augment the record on

American man, further alleged that at the time he was detained he was simply shopping and his detention with accompanying false accusations of theft was racially motivated and carried out by CVS employees pursuant to the corporation's discriminatory policies.

Marsh's first amended complaint contained four causes of action, labeled only by number. The first cause of action alleged CVS's conduct violated his civil rights. The second cause of action, which added the allegation that CVS's employees had deliberately interfered with his freedom of movement by unlawfully detaining him, appears to be a cause of action for false imprisonment. His third cause of action alleged Marsh suffered a loss of consortium as a result of the discriminatory misconduct alleged. His fourth cause of action alleged a knowing pattern of discriminatory conduct by CVS and sought punitive damages.

2. CVS's Demurrer and the Trial Court's Ruling

On May 27, 2016 CVS demurred to Marsh's first amended complaint.² It argued the entire complaint was vague and uncertain because Marsh had not labeled his claims and, in particular, asserted it could not determine what theories Marsh intended to pursue in his first and second causes of action (Code Civ. Proc., § 430.10, subd. (f)). CVS also argued the second cause of action, to the extent it was a claim for false imprisonment, failed to state facts sufficient to constitute a cause of action against CVS, specifically noting Marsh had not alleged facts to indicate he had been confined involuntarily for any appreciable

our own motion to include Marsh's first amended complaint and CVS's demurrer. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

² CVS also moved to strike the prayer for punitive damages.

length of time (Code Civ. Proc., § 430.10, subd. (e)). The demurrer to the third cause of action argued Marsh lacked standing to assert a claim for loss of consortium (Code Civ. Proc., §§ 430.10, subds. (b) & (e)). Finally, characterizing the fourth cause of action as solely a claim for punitive damages, CVS argued Marsh had failed to state facts sufficient to constitute a cause of action because there is no separate or independent cause of action for punitive damages.

According to material submitted by CVS as part of its demurrer, counsel for CVS met and conferred with Marsh concerning the substance of its demurrer prior to filing it. Marsh initially agreed to correct certain of the deficiencies counsel had identified, including labeling each cause of action, alleging additional facts in connection with the claim of false imprisonment and removing the cause of action for loss of consortium. However, at the case management conference Marsh stated he no longer intended to file a second amended complaint. CVS then filed its demurrer.

Marsh did not file an opposition to the demurrer,³ but appeared at the hearing on June 27, 2016. Both Marsh and counsel for CVS presented oral argument. (There is no reporter's transcript or settled statement of that proceeding in the record on appeal.) The court took the matter under submission and, later the same day, sustained the demurrer without leave to amend

³ Marsh suggests in his briefs in this court that he did not receive proper notice that CVS had filed its demurrer. The proof of service attached to the superior court file copy of the demurrer indicates service by mail on Marsh at the address listed on his first amended complaint.

based on the grounds set forth in the CVS demurrer.⁴ An order of dismissal was filed on July 7, 2016.

DISCUSSION

1. *Standard of Review*

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court's ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) However, we are not required to accept the truth of the legal conclusions pleaded in the complaint. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Tepper v. Wilkins* (2017) 10 Cal.App.5th 1198, 1203.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Ivanoff v. Bank of America* (2017) 9 Cal.App.5th 719, 726; see *Schifando*, at p. 1081 [complaint must be read in context and given a reasonable interpretation].)

“Where the complaint is defective, “[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint.”” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.) We determine

⁴ CVS's motion to strike was denied as moot.

whether the plaintiff has shown “in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “[L]eave to amend should *not* be granted where . . . amendment would be futile.” (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685; see generally *Ivanoff v. Bank of America, supra*, 9 Cal.App.5th at p. 726.)

2. *Marsh Has Failed To Demonstrate the Trial Court Erred in Sustaining CVS’s Demurrer*

A cardinal rule of appellate review is that the judgment or order of the trial court is presumed correct and prejudicial error must be shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *Baldwin v. AAA Northern California, Nevada & Utah Ins. Exchange* (2016) 1 Cal.App.5th 545, 549 “[a]ppellant bears the burden of demonstrating that the trial court erred in sustaining the demurrer”). To that end, the California Rules of Court require an appellant to identify points of law and error, to support them by argument and, if possible, citation of authority and to provide specific references to the record in support of those arguments. (Cal. Rules of Court, rule 8.204(a)(1)(B)-(C); see *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [“[a]ppellate briefs must provide argument and legal authority for the positions taken”]; *In re S.C.* (2006) 138 Cal.App.4th 396, 408 [“[t]o 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”].)

Absent compliance with these rules, we have no basis to evaluate the trial court’s decision in a particular matter.

““Although our review of a [demurrer] is de novo, it is limited to

issues [that] have been adequately raised and supported in plaintiffs' brief. [Citations.] Issues not raised in an appellant's brief are deemed waived or abandoned.”” (*Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282; see *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [issues not raised in appellant's opening brief are forfeited]; see also *Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956 [court will not develop appellants' arguments for them]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [same].)

We acknowledge a self-represented litigant's understanding of the rules on appeal is, as a practical matter, far more limited than an experienced appellate attorney's. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing.⁵ Here, however, although Marsh argues generally that CVS's demurrer should not have been sustained, his briefs fail to point to any error in the court's ruling. In particular, Marsh does not contend, let alone demonstrate, that his first amended complaint adequately alleged facts that would satisfy all required elements of any cognizable cause of action. Accordingly, the court's order

⁵ CVS urges us to affirm the trial court's order of dismissal because Marsh did not provide an adequate record on appeal. CVS is, of course, correct that it is an appellant's burden to do so. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.) However, Marsh's failure to include his first amended complaint and CVS's demurrer in his designation of record was easily corrected and would not deter us from considering the merits of his appeal if that were the only procedural shortcoming.

sustaining the demurrer must be affirmed. (See *Loeffler v. Target Corp.*, *supra*, 58 Cal.4th at p. 1100.)

3. *Marsh Has Failed To Establish an Amendment Would Cure the Defects in His First Amended Complaint*

Although Marsh requests leave to amend if we affirm the trial court's order sustaining CVS's demurrer, he does not indicate in either his opening or reply brief in what manner he could amend his first amended complaint or show how permitting amendment will change the legal effect of his pleading.⁶ As discussed, this is Marsh's burden. (*Goodman v. Kennedy*, *supra*, 18 Cal.3d at p. 349.)

"The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for the amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44; accord, *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.) "Where the appellant offers no allegations to support the possibility of amendment and no legal authority

⁶ Asked at oral argument if he could allege additional facts to support any of his claims if given another opportunity, Marsh stated only that one of the CVS employees had pressed his phone against Marsh's back when he was detained, which Marsh believed was an electroshock weapon. That single additional allegation is insufficient to cure the deficiencies in the first amended complaint.

showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend.”” (*Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 458.)

DISPOSITION

The order of dismissal is affirmed. CVS is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.*

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