Filed 11/14/17 Maynes v. Western Christian School CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARLOS MAYNES, Plaintiff and Appellant, v. WESTERN CHRISTIAN SCHOOL et al., Defendants and Respondents.	B277512 Los Angeles County Super. Ct. No. BC579047

APPEAL from a judgment of the Superior Court of Los Angeles County, Howard L. Halm and Steven J. Kleifield, Judges. Reversed in part, affirmed in part, with directions.

Shegerian & Associates, Carney R. Shegerian and Heather K. Conniff for Plaintiff and Appellant.

The Porrazzo Law Firm, Michael H. Porrazzo and Nicholas D. Porrazzo for Defendants and Respondents.

INTRODUCTION

Plaintiff Carlos Maynes sued his former employer Western Christian School (Western Christian or the school) and three former supervisors for violations of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.),[1] Labor Code section 1102.5, and various common law claims.[2] Maynes appeals from the judgment of dismissal entered after the trial court sustained defendants' demurrer without leave to amend.

We reverse in part and affirm in part. With respect to Maynes' FEHA and wrongful termination in violation of public policy claims, the court erred by finding defendants are exempt from liability based on the truth of factual statements contained in judicially noticed documents. With respect to Maynes' claims for violation of Labor Code section 1102.5 and intentional infliction of emotional distress, Maynes failed to meet his burden to demonstrate error on appeal.

FACTS AND PROCEDURAL BACKGROUND

1. Maynes' Employment and Termination[3]

Western Christian is a "corporation primarily operating for educational purposes." Western Christian hired Maynes as a full-time maintenance worker in January 2010, after he and his wife had volunteered at the school for seven years. Western Christian hired Maynes to "further the educational purposes" of the school's mission.

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1 All undesignated statutory references are to the Government Code.

2 Maynes' former supervisors are Shauna Attwood, Michelle Browning, and Greg Saugstad. We collectively refer to Western Christian and the three supervisors as "defendants."

3 The facts are drawn from the operative first-amended complaint.

Throughout the five years that he worked for Western Christian, Maynes received positive performance reviews and, during his last year of employment with the school, he received a two-percent salary increase. Maynes was the only male employee of Mexican descent who worked at the school.

According to Maynes, Western Christian became a hostile work place in 2012, after faculty and staff "began harassing him when he made simple requests of them." The "mistreatment" increased in intensity when Saugstad, the head of maintenance at Western Christian, hired a white maintenance worker. Saugstad allegedly favored the white worker over Maynes by giving the other worker more responsibility with the company truck and credit card, and by holding private meetings with the other worker while Maynes continued to work.

On another occasion, Maynes complained to Saugstad and Attwood about being yelled at by a teacher's husband, but neither supervisor offered Maynes any recourse. Saugstad responded to Maynes' complaint by telling Maynes, "You know what your problem is? . . . It's the way you look; you look angry or mean."

In October 2013, Maynes complained to Attwood that he was treated poorly, that he felt disrespected, and that the school's superintendant had "judged" him and his wife. That same month, Saugstad told Maynes that the superintendant had commented about Maynes being unhappy and that the superintendent did "not want someone who is unhappy working" at the school. Saugstad then informed Maynes that October 25, 2013 would be Maynes' last day working at the school. Nevertheless, Maynes continued working at the school for almost another year.

When Maynes stated that he thought everyone who worked at Western Christian was family, Saugstad replied, "Western [Christian] just says that; it's really all about tuition." During

another conversation, Saugstad told Maynes that "some people should just go back to Mexico; there is a lot of space there," and that the problem with the United States was that it "won't close the border."

Maynes also complained to Saugstad that the pool's temperature was too high and that the pool should not remain covered because it would create unsanitary swimming conditions in violation of Health and Safety Code section 116040.[4] Saugstad responded, "I know, but I don't want complaints."

In July 2014, Maynes underwent knee surgery and took time off from work to take care of his physical condition. After he returned to work, Maynes complained to Susan Moreno, the director of Western Christian's K-8 program, about the pool's unsanitary conditions and how he believed he was being mistreated by other people at the school. Moreno reported Maynes' complaints to Browning. Browning then told Saugstad, Attwood, and the school's superintendent that "[Moreno] said [Maynes] complains to her about stuff every morning." Browning stated that she wanted Maynes immediately removed from the school's campus. Saugstad replied, "The most recent issues I have had with [Maynes] was when he needed time off for knee surgery."

On September 23, 2014, Western Christian terminated Maynes' employment, citing Maynes' "unhapp[iness]" as its reason for firing him. Maynes claims, however, that the school fired him because of "his race, his taking protected leave, his good faith complaints regarding harassment and retaliation, and his

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[4] Health and Safety Code section 116040 provides, "Every person operating or maintaining a public swimming pool must do so in a sanitary, healthful and safe manner."

activities as a whistle-blower about [Western Christian's] unsanitary pool."

2. The Lawsuit, Demurrer Proceedings, and Appeal

In April 2015, Maynes sued Western Christian, Attwood, Browning, and Saugstad. The operative first-amended complaint contains the following causes of action: (1) disability discrimination in violation of FEHA; (2) retaliation for taking medical leave in violation of FEHA; (3) discrimination on the basis of race, ancestry, or national origin in violation of FEHA; (4) harassment on the basis of race, ancestry, or national origin in violation of FEHA; (5) retaliation for complaining about discrimination and harassment based on race, ancestry, or national origin in violation of FEHA; (6) retaliation in violation of Labor Code section 1102.5; (7) breach of an express oral contract not to terminate Maynes' employment; (8) breach of an implied-in-fact contract not to terminate Maynes' employment; (9) wrongful termination in violation of public policy under FEHA and Labor Code section 1102.5; (10) failure to prevent discrimination, harassment, and retaliation in violation of FEHA; and (11) intentional infliction of emotional distress.[5]

Defendants demurred to the first-amended complaint. Primarily, defendants argued Maynes failed to allege sufficient facts to state claims in the first through fifth and tenth causes of action to the extent they were based on Western Christian's alleged violations of FEHA. Defendants contended they are exempt from liability under FEHA, as well as for any claims based on violations of FEHA, because the school is a nonprofit

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[5] The first through third and fifth through tenth causes of action are brought against only Western Christian; the fourth and eleventh causes of action are brought against all four defendants.

religious corporation that does not qualify as an employer under FEHA (see § 12926, subd. (d)).[6]

With respect to Maynes' claim for intentional infliction of emotional distress, defendants argued Maynes failed to plead facts demonstrating defendants engaged in "extreme and outrageous" conduct, and that the claim was barred by the workers' compensation exclusivity provisions.

In support of their demurrer, defendants filed a request for judicial notice of four exhibits: (1) a certified copy of the school's Amended and Restated Articles of Incorporation (articles of incorporation), dated November 9, 2010; (2) a Letter of Exemption from the California Franchise Tax Board that was filed with the California Secretary of State (exemption letter), dated August 20, 2015; (3) a letter from the Internal Revenue Service (IRS), recognizing the school's tax-exempt status as a non-profit organization (IRS letter), dated August 9, 1993; and (4) a copy of a portion of the school's website, as of August 20, 2015. Defendants explained the statements in those judicially noticed exhibits established the school is exempt from liability for violations of FEHA and any FEHA-related claims.

Relevant here, the articles of incorporation state, "The corporation is a nonprofit religious corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Religious Corporation Law primarily for religious purposes." The articles of incorporation also state: "The specific purposes for which this corporation is organized are religious ones to wit: To glorify God and His truth by passing on His self-revelation to successive generations, to provide high quality education in a Christ-centered environment

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[6] Section 12926, subdivision (d), provides that, for purposes of FEHA, " '[e]mployer' does not include a religious association or corporation not organized for private profit."

that integrates faith and learning; to disseminate, teach and preach the Gospel and teachings of Jesus Christ, and to encourage and aid the growth, nurture, and spread of the Christian religion; to train Christian young men and women to impact our world in a positive manner for Jesus Christ; and to take such other actions as are consistent with these purposes." In addition, the articles include a statement of faith, identifying the Christian beliefs that the school claims it was founded upon. The Franchise Tax Board exemption letter states that, as of August 2015, Western Christian was exempt from taxes under "Revenue and Taxation Code section 23701d;" the IRS letter states that, as of August 1993, the school was exempt from federal income tax under "Internal Revenue Code Section 501(c)(3)."

On April 22, 2016, the court ruled on defendants' demurrer and request for judicial notice. The court granted the request for judicial notice as to the articles of incorporation, the exemption letter, and the IRS letter, but denied it as to the school's website. The court sustained the demurrer without leave to amend as to all but the first-amended complaint's seventh and eight causes of action for breach of contract.

The court concluded Maynes' first through fifth and tenth causes of action, all of which raised FEHA or FEHA-related claims, were barred because Western Christian is not an employer that is subject to liability under FEHA. Specifically, the court found Western Christian is a religious corporation not organized for profit that is exempt from liability under section 12926, subdivision (d). In making that finding, the court relied on statements contained in the articles of incorporation, the exemption letter, and the IRS letter.

The court rejected Maynes' argument that Western Christian was subject to liability under FEHA because it

qualified as a nonprofit public benefit corporation affiliated with a religion that operates an educational institution as its sole or primary activity (see § 12926.2, subd. (f)).[7] The court stated, "The [articles of incorporation] clearly state that Western Christian is a 'religious organization'; as such, defendant does not fall under the definition of 'employer' under FEHA. Plaintiff's allegation that 'defendant is a corporation primarily operating for education purposes' is insufficient to show that defendant is a non-profit public benefit corporation organized under [the] Corp[orations] Code . . . . Plaintiff does not cite to any authority that Western Christian can be both a religious corporation and a public benefit corporation and that being a public benefit corporation trumps being a religious corporation for the sake of FEHA."

With respect to Maynes' sixth cause of action for violation of Labor Code section 1102.5, the court found that, to the extent that claim was based on allegations that Western Christian or its employees violated FEHA, it was barred for the same reasons discussed above. The court also found Maynes otherwise failed to state a claim for violation of Labor Code section 1102.5 because he did not allege that he had "disclos[ed] any information to a government or law enforcement agency" or that he had "reasonable cause" to believe that any information he did disclose

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[7] Section 12926.2, subdivision (f) provides: "(1) Notwithstanding any other provision of law, a nonprofit public benefit corporation formed by, or affiliated with, a particular religion and that operates an educational institution as its sole or primary activity, may restrict employment, including promotion, in any or all employment categories to individuals of a particular religion. [¶] (2) Notwithstanding paragraph (1) or any other provision of law, employers that are nonprofit public benefit corporations specified in paragraph (1) shall be subject to the provisions of this part in all other respects, including, but not limited to, the prohibitions against discrimination made unlawful employment practices by this part."

to his supervisors at Western Christian concerned "a violation or noncompliance with a state or federal rule or regulation." As for Maynes' ninth cause of action for wrongful termination in violation of public policy, the court found the claim was barred because it was entirely dependent on Maynes' claims for violation of FEHA and Labor Code section 1102.5.

Finally, with respect to Maynes' eleventh cause of action for intentional infliction of emotional distress, the court rejected defendants' argument that the claim was barred by the exclusivity provisions of the Workers' Compensation Act. The court nevertheless found Maynes failed to state a claim because he did not allege defendants engaged in extreme and outrageous conduct.

On September 7, 2016, shortly after he voluntarily dismissed the seventh and eighth causes of action for breach of contract, Maynes filed a notice of appeal from the court's order sustaining defendants' demurrer without leave to amend. On January 27, 2017, the court entered judgment in favor of defendants and dismissed Maynes' first-amended complaint with prejudice. We deem the premature notice of appeal as filed immediately after the court entered judgment on January 27, 2017. (See Cal. Rules of Court, rule 8.104, subd. (d)(2).)

DISCUSSION

1. Standard of review

We independently review a trial court's order sustaining a demurrer to determine whether the operative complaint states a cause of action under any legal theory. (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) We assume the truth of all facts properly pled by the plaintiff, as well as those that are judicially noticeable. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.)

We liberally construe the complaint's allegations with a view toward substantial justice. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7.)

When a demurrer "is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Such a showing can be made for the first time before the reviewing court. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

2. The trial court erred in sustaining the demurrer to the first, second, third, fourth, fifth, and tenth causes of action for violations of FEHA.

Maynes contends the judgment should be reversed because the operative pleading alleges Western Christian is an employer subject to FEHA, or because there is a disputed factual issue concerning the school's status which should be tested at trial. At the outset, we note the only ground upon which defendants challenged Maynes' FEHA claims in their demurrer was that Western Christian is a nonprofit religious corporation exempt from liability under FEHA pursuant to section 12926, subdivision (d). Similarly, on appeal, the parties focused on this issue. Accordingly, we limit our analysis to this issue and do not address whether Maynes properly pled the other required elements to support his FEHA claims. As we will explain, the court improperly resolved at the demurrer stage a factual dispute concerning whether the school could be held liable under FEHA.

FEHA was enacted to protect "the rights of all persons to seek, obtain, and hold employment without discrimination on

account of various characteristics, which now include race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, and sexual orientation." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 984.) FEHA prohibits employers from engaging in discriminating, harassing, or retaliating conduct motivated by these protected statuses or certain protected activities of their employees. (See *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 491.) Under section 12926, subdivision (d), a "religious association or corporation not organized for private profit" is expressly excluded from FEHA's definition of an "employer." Accordingly, a nonprofit religious corporation or association cannot be held liable for violating FEHA. (*Kelly v. Methodist Hospital of So. California* (2000) 22 Cal.4th 1108, 1114–1126 (*Kelly*); *Henry v. Red Hill Evangelical Lutheran Church of Tustin* (2011) 201 Cal.App.4th 1041, 1049–1050 (*Henry*).) Under section 12926.2, subdivision (f), however, a "nonprofit public benefit corporation formed by, or affiliated with, a particular religion . . . that operates an educational institution as its sole or primary activity" is subject to FEHA's prohibitions against discrimination, except that such a corporation may restrict employment to individuals of a particular religion. (§ 12926.2, subds. (f)(1), (2).)

In the complaint, Maynes alleged Western Christian is a "corporation primarily operating for educational purposes" and the school hired him as a "maintenance worker in order to further the educational purposes of [Western Christian's] mission." Maynes did not set forth any facts concerning Western Christian's status as a nonprofit religious association or corporation. Thus, based on the allegations in the pleading, Western Christian is an "employer" subject to FEHA. Put differently, there are no allegations in the first-amended

complaint to support defendants' contention that Western Christian is exempt from liability as a nonprofit religious corporation or association under section 12926, subdivision (d).

Nevertheless, the court found Western Christian is a nonprofit religious corporation or association exempt from liability under FEHA, and Saugstad, Browning, and Attwood, as employees of Western Christian, were also exempt from liability under the statute. The court made this finding after taking judicial notice of the truth of statements contained in the articles of incorporation, the exemption letter, and the IRS letter. In particular, the court relied on statements in the exemption and IRS letters that Western Christian is exempt from taxation under state and federal law, as well as statements in the articles of incorporation that Western Christian is a nonprofit religious corporation organized primarily for religious purposes. The court erred.

"[T]he 'demurrer tests the pleading alone and not the evidence or other extrinsic matters which do not appear on the face of the pleading or cannot be properly inferred from the factual allegations of the complaint. This principle means that if the pleading sufficiently states a cause of action the demurrer cannot be granted on the basis of a showing of extrinsic matters by inference from attached exhibits, affidavits or otherwise except those matters which are subject to judicial notice.' [Citation.]" (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 864.)

The types of matters a court may take judicial notice of are limited. For example, a court may take judicial notice of documents filed with, or issued by, official government agencies to establish those documents were *filed* with or *issued* by those agencies. (Evid. Code, § 452, subd. (c); *Chas. L. Harney, Inc. v. State* (1963) 217 Cal.App.2d 77, 85.) A court may not take judicial notice, however, of the truth of the statements contained

in those documents where the content of the statements is subject to dispute and not "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (See Evid. Code, § 452, subd. (h).) "Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) "[A] court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 115.)

Here, the court could have taken judicial notice that Western Christian had *filed* the articles of incorporation with the Secretary of State, and that the IRS and Franchise Tax Board had *issued* the IRS letter and the exemption letter, respectively.[8] (Evid. Code, § 452, subd. (c).) It was not proper, however, for the court to take judicial notice of the truth of the statements contained in those documents, such as the statements addressing the organizational structure of Western Christian and the purposes for which Western Christian was formed. (See *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1484, fn. 12 [court may take judicial notice of the *existence* of the original articles of incorporation].) As a result of this error the court determined Western Christian is a nonprofit religious corporation, and overrode the allegation in

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[8] In his reply brief, Maynes states the court also erred because he sued Western Christian School but the judicially-noticed documents refer to a different entity, Western Christian ***Schools***. We agree that this discrepancy presents another disputed factual issue that could not be resolved by demurrer.

the first-amended complaint that the school is a "corporation primarily operating for educational purposes." At best, the statements in the articles of incorporation, the exemption letter, and the IRS letter gave rise to competing inferences about Western Christian's status as a religious corporation, a dispute that could not be resolved at the demurrer stage.[9] (See *CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 631, 635 [a demurrer is not the appropriate procedure "for determining the truth of disputed facts or what inferences should be drawn where competing inferences are possible"].)

In any event, even if the court properly could have taken judicial notice of the truth of the contents of the articles of incorporation, the exemption letter, and the IRS letter, that evidence does not conclusively establish that, throughout the period of Maynes' employment and at the time of his termination, Western Christian qualified as a nonprofit religious corporation exempt from liability under FEHA. As noted, Maynes was hired by Western Christian in January of 2010, and he worked for the school until his termination in September 2014. The IRS letter, however, is dated August 9, 1993, nearly twenty years before Maynes started working for the school, and the exemption letter is dated August 20, 2015, nearly a year after Maynes was terminated. These documents therefore do not address the school's nonprofit status under state or federal law at any time during Maynes' employment, and defendants presented no other evidence from these agencies concerning whether the school

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[9] For similar reasons, the court's reliance on *Kelly* and *Henry* to find Western Christian qualifies as an exempt nonprofit religious corporation is misplaced since those cases addressed findings made on fully-developed factual records at either the summary judgment stage (*Kelly*) or after a bench trial (*Henry*). (See *Kelly*, *supra*, 22 Cal.4th at pp. 1113–1114; *Henry*, *supra*, 201 Cal.App.4th at p. 1048.)

qualified as a nonprofit organization during the relevant time period. While the articles of incorporation are dated November 9, 2010, less than a year after Western Christian hired Maynes, defendants did not establish those articles remained in effect, or the school actually operated in a manner consistent with the terms of the articles, throughout the remainder of Maynes' employment and at the time of his termination.

For these reasons, the court erred in sustaining defendants' demurrer to the first, second, third, fourth, fifth, and tenth causes of action.

3. Maynes failed to demonstrate error as to the sixth cause of action for violation of Labor Code section 1102.5.

Maynes asserts the court also erred when it sustained defendants' demurrer to his sixth cause of action for violation of Labor Code section 1102.5. While Maynes contends he sufficiently pled a violation of this statute, nowhere in his opening or reply briefs does he directly address the statutory cause of action. Indeed, other than in an argument heading and in a conclusion, the briefs do not even so much as cite to the statute, much less discuss its provisions or its application to the allegations in the pleading.

" 'It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and " ' "all intendments and presumptions are indulged in favor of its correctness." ' [Citation.]" [Citation.] An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. "Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived." [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the

presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]' [Citation.]" (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799; *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538 [failure to brief issue constitutes a waiver or abandonment of the issue on appeal].)

Since Maynes did not provide us with reasoned analysis to develop this argument, we disregard it.

4. The trial court erred in sustaining the demurrer to the ninth cause of action for wrongful termination in violation of public policy.

Maynes argues the court erred in sustaining defendants' demurrer to his ninth cause of action for wrongful termination in violation of public policy. We agree.

Maynes alleged Western Christian terminated his employment in violation of public policy by discriminating against him on the basis of "his protected status (race, national origin, and/or ancestry)" and his participation in "protected activities." Specifically, Maynes alleged Western Christian's termination of his employment violated the fundamental public policies underlying FEHA's prohibition against discrimination based on race, national origin, and ancestry, the California Constitution's prohibition against workplace discrimination based on an employee's race, and Labor Code section 1102.5. These allegations are sufficient to state a claim for wrongful termination in violation of public policy. (See *Rojo v. Kliger* (1990) 52 Cal.3d 65, 89 [termination in violation of article I, section 8 of the California Constitution prohibiting workplace discrimination on the basis of race gives rise to a claim for wrongful termination in violation of public policy]; *Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 886

[an alleged violation of FEHA satisfied the "public policy" element of a claim for wrongful termination in violation of public policy].)

In sustaining the demurrer to this cause of action, the court concluded the claim was barred because it was tethered to Maynes' FEHA claims. That is, the court found that because Western Christian is exempt from liability under FEHA as a nonprofit religious corporation, Maynes could not sue the school for wrongful termination in violation of public policy for the same acts giving rise to his FEHA claims. (See *Kelly*, *supra*, 22 Cal.4th at p. 1126 [a "religious association or corporation not organized for private profit" is "exempt from a claim for wrongful termination in violation of public policy based upon the public policy expressed in FEHA"].) As we discussed above, it was error for the court to find at the demurrer stage that Western Christian qualifies as a nonprofit religious corporation exempt from liability under FEHA. The court therefore also erred in relying on that finding to conclude Maynes' claim for wrongful termination in violation of public policy was barred.

5. Maynes failed to demonstrate error as to the eleventh cause of action for intentional infliction of emotional distress.

Finally, Maynes argues the court erred in sustaining the demurrer to his eleventh cause of action for intentional infliction of emotional distress. As to this claim, the court found the allegations in the pleading are insufficient to rise to the level of extreme and outrageous conduct. Notably, this was the only ground the court relied on in sustaining defendants' demurrer to the eleventh cause of action.

In his opening brief, Maynes does not address this aspect of the court's ruling, nor does he address any of the elements of a claim for intentional infliction of emotional distress. Instead, he

addresses only issues the court either resolved in his favor or did not address when ruling on the demurrer. In their respondents' brief, defendants point out that Maynes fails to address the actual grounds the court relied on to sustain their demurrer to Maynes' claim for intentional infliction of emotional distress, an argument Maynes does not respond to in his reply brief.

Because Maynes has failed to discuss the elements necessary to establish a claim for intentional infliction of emotional distress or provide any reasoned argument or citations to authority demonstrating why the court erred in sustaining the demurrer to the eleventh cause of action, he has forfeited any challenge to that part of the court's ruling. (See *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].)

DISPOSITION

The judgment of dismissal is reversed and the cause is remanded to the trial court with directions to vacate its order sustaining defendants' demurrer to the first-amended complaint without leave to amend. The court shall enter a new order sustaining the demurrer without leave to amend as to the sixth and eleventh causes of action, and overruling the demurrer as to the first through fifth, ninth, and tenth causes of action. The court shall conduct further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

STONE, J.*

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