

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ABDUL MADYUN

Plaintiff and Appellant,

v.

COMMUNITY GENTRIFICATION
CORPORATION, et al.,

Defendants and Respondents.

B286661

(Los Angeles County
Super. Ct. No. TC028154)

APPEAL from an order of the Superior Court of Los Angeles County, Brian Currey, Judge. Affirmed.

Abdul Madyun, in pro. per., for Plaintiff and Appellant.

Law Offices of Gregory W. Patterson and Gregory W. Patterson for Defendant and Respondent Community Gentrification Corporation.

Wolfe & Wyman and Cathy L. Granger for Defendant and Respondent Broker Solutions, Inc.

Law Offices of Duff S. McEvers and Duff S. McEvers for Defendant and Respondent Las Virgenes Investments, LLC.

INTRODUCTION

Abdul Madyun attempted to claim title to certain real property in Los Angeles County via adverse possession. The trial court granted defendants' and respondents' motion for nonsuit and dismissed Madyun's complaint with prejudice. On appeal, Madyun contends the trial court erred in finding he could not establish the requisite elements of adverse possession, namely that he failed to prove he timely paid all property taxes. Because Madyun fails to provide us with a record sufficient to evaluate his claim, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Abdul Madyun filed a complaint¹ in the Los Angeles Superior Court on May 18, 2015 against Community Gentrification Corporation (Community Gentrification), Las Virgenes Investments, LLC (Las Virgenes), and others, to quiet title based on adverse possession, fraud, and conspiracy with respect to certain real property in Compton, CA. Madyun alleged he took possession of the property in 1988 because it was abandoned and facing foreclosure. Madyun also claimed he paid off the outstanding debt and taxes on the property. Madyun alleged he was informed and believed Thomas Edwards (Edwards), the record title owner, was deceased and left no heirs "because no one ever came around to question [Madyun's] occupation and possession of the property."

¹ The case summary from the trial court reflects that amended complaints were filed on June 3, 2016, February 16, 2017, and March 16, 2017. None of these amended complaints are in the record before us.

According to Madyun, Cathie Butler (not a party to this appeal), with the assistance of Las Virgenes, filed a fraudulent affidavit in October 2014 claiming an interest in the property as heir to Edwards's estate despite knowing that Madyun had been living on the property and paying the property taxes. Butler thereafter fraudulently transferred the property via grant deed to Las Virgenes, which then fraudulently transferred the property to Community Gentrification.

Community Gentrification filed a motion for judgment on the pleadings in April 2016. After a hearing, the trial court denied the motion; neither the court's order nor a transcript of the hearing appears in the record before us. The matter was set for trial and, after opening statements on March 9, 2017, Las Virgenes and Community Gentrification filed a motion for nonsuit alleging Madyun could not establish the elements of adverse possession because: he failed to show he timely paid all property taxes; could not prove he "claimed" the property as required by the legislature; and failed to name, serve, or obtain defaults of certain indispensable parties to the action. The court set a hearing on the motion for April 25, 2017; we have no transcript or other record of the hearing before us on appeal. Madyun then filed a motion on May 19, 2017 asking the court to allow him to make an offer of proof with respect to the property taxes and attached as exhibits a number of documents purporting to show he timely paid all property taxes.

The court set a hearing on the motion for July 13, 2017. The record reflects that the court granted the motion for nonsuit that day, and subsequently granted Madyun leave to file a supplemental brief addressing whether he was entitled to some form of equitable relief. We have no transcript or other record of

this hearing. Madyun filed his supplemental brief on August 14, 2017 in the form of a motion asking the court to reopen the case and allow him again to make an offer of proof with respect to the property taxes. Hearings on the motion convened on September 19 and 26, 2017; the court denied the motion at the September 26 hearing. We have no transcript or other record of these hearings before us.

The court granted the motion for nonsuit on October 13, 2017 and dismissed the complaint with prejudice. Among other findings, the court determined: Madyun could not establish the requisite elements of adverse possession because he admitted failing to timely pay the property taxes; could not offer certified records of proof of timely payments; and could not prove that he claimed the property as required by Code of Civil Procedure section 325. Madyun could not obtain judgment because he failed to name, serve, or obtain defaults of certain indispensable parties to the action; his opening statement and offer of proof failed to establish the requisite elements of fraud; he failed to establish he was a good faith improver entitled to damages pursuant to Code of Civil Procedure sections 741, 871.3, and 871.4; and, he could not exhibit any equitable rights to support a judgment in his favor. The two-page order does not include a discussion of the facts or evidence upon which the court based its findings.

DISCUSSION

A. Standard of Review

“We independently review an order granting a nonsuit, evaluating the evidence in the light most favorable to the plaintiff and resolving all presumptions, inferences and doubts in his or her favor.” (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1124.) “[R]eversal is warranted if there is ‘some substance to plaintiff’s evidence upon which reasonable minds could differ.’ ” (*Id.* at pp. 1124–1125) “If there is substantial evidence to support [the plaintiff’s] claim, *and* if the state of the law also supports that claim, we must reverse the judgment.” (*Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 895.)

B. Madyun Failed to Provide an Adequate Record Demonstrating Error by the Trial Court

On appeal, Madyun challenges the court’s finding that he did not timely pay property taxes but does not address the remaining findings made by the court supporting its decision to dismiss Madyun’s complaint. In any event, we affirm the trial court’s order because Madyun has not provided us with a sufficient record to establish he was entitled to a judgment in his favor.

1. *An Appellant Has a Duty to Provide an Adequate Record on Appeal.*

“[I]t is settled that: ‘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. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ ” (*Denham v. Superior*

Court (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.)

The presumption of correctness " 'has special significance when . . . the appeal is based upon the clerk's transcript.' [Citation.] 'It is elementary and fundamental that on a clerk's transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings' "

(*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521–522.) Our review is limited to determining whether any error "appears on the face of the record." (*Id.* at p. 521; see Cal. Rules of Court, rule 8.163.)²

Unless an error appears on the face of the record, an appellant's " '[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; see *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion."].)

² California Rules of Court, rule 8.163 provides: "The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record."

2. No Error Appears on the Face of the Record to Overcome the Presumption of Correctness

Madyun did not provide us with reporter's transcripts of any of the trial court's proceedings to support his appeal. Nor has he provided an adequate substitute for a reporter's transcript such as a settled or agreed upon statement of the hearings. (Cal. Rules of Court, rules 8.134, 8.137.) Further, the clerk's transcript lacks a number of documents relating to the judgment in this matter. Without these crucial pieces of the record, we do not know what statements were made by any of the parties at the hearings or what evidence the parties attempted to proffer in support of their respective positions. Nor do we know the evidence upon which the court based its October 13, 2017 order granting nonsuit and dismissing Madyun's complaint. We are therefore unable to evaluate whether substantial evidence supports a dismissal of Madyun's complaint.

“Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].” (*Foust v. San Jose Construction Co., Inc.*, *supra*, 198 Cal.App.4th at p. 187.) Madyun has only provided us with portions of the clerk's transcript. In the absence of a transcript or suitable equivalent, we must “‘conclusively presume’” that the evidence in the clerk's transcript is “‘ample to sustain the findings.’” (*National Secretarial Service, Inc. v. Froehlich*, *supra*, 210 Cal.App.3d at p. 522.) Because Madyun has not provided us with a sufficient record to overcome the presumption that the trial court's ruling was correct, we affirm.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.