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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ANTOINE FLOYDE,

Plaintiff and Appellant,

v.

JESS GONZALES et al.,

Defendants and Respondents.

2d Civil No. B279038  
(Super. Ct. No. 56-2013-00440150-  
CU-FR-VTA)  
(Ventura County)

Antoine Floyd appeals a judgment dismissing his lawsuit against Jess Gonzales and Donna J. Sheardown following the trial court's order granting a nonsuit. (Code Civ. Proc., § 581c.)<sup>1</sup> We affirm.

*FACTUAL AND PROCEDURAL HISTORY*

On August 5, 2013, Floyd brought an action against his stepfather Gonzales, his former wife Sheardown, and others, concerning real property located at 9753 Oso Avenue in Chatsworth, as well as other parcels of real property owned by

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<sup>1</sup> All statutory references are to the Code of Civil Procedure.

the Richard Mulholland Trust. Floydde alleges that he purchased the property on May 5, 1984, but that his mother and stepfather held title to the property for his benefit. The seller of the real property allegedly included in the sale a "windfall" of 99 additional lots. Floydde alleges that defendants have defrauded him of his interests in the 100 parcels of property. He also alleges that defendants wrongfully possess "banking interests and stocks" that belong to him.

In addition, Floydde complains of the loss of an auto wrecking business that he acquired in 1985, but lost several years later. Floydde alleges that he was unlawfully evicted from the business in 1987 and was manipulated by his then-wife Sheardown to declare bankruptcy in 1987.

Floydde's complaint attempts to state causes of action for fraud, breach of fiduciary duty, and intentional infliction of emotional distress, among others. Certain allegations are similar to those alleged in a complaint Floydde filed in 1998 against Gonzales. The trial court dismissed the previous action when Floydde, a prison inmate, failed to appear for trial or to request a continuance of trial. We affirmed the dismissal. (*Floydde v. Gonzales* (Sept. 21, 2000, B135800) [nonpub. opn.] )

On July 14, 2016, the present lawsuit proceeded to a jury trial. Floydde, Gonzales, and Sheardown appeared in propria persona. Following the testimony of Floydde and another witness, Gonzales and Sheardown moved for nonsuit. After argument by the parties, the trial court granted the motion as to all causes of action. The court's written ruling states: "The Court grants defendants' oral motion for non-suit as to all causes of action. [¶] [Floydde] failed to present Prima Facie evidence to support any causes of action against any defendant. [¶] In addition, the

statute of limitation has run for more than two decades and [the] statute of fraud[s] prohibits the case to go forward. [¶] . . . The Court dismisses the entire action with prejudice."

Floyde, in propria persona, appeals and challenges the nonsuit and judgment of dismissal. He has not supplied a record of the oral proceedings, however. Gonzales and Sheardown have not responded to the appeal.

### *DISCUSSION*

The defendant in a jury trial may move for a judgment of nonsuit following the plaintiff's presentation of evidence. (§ 581c, subd. (a).) The motion may be made where plaintiff's evidence discloses a defense that plaintiff cannot overcome. (*Skelton v. Schacht Motor Car Co.* (1913) 22 Cal.App. 144, 146.) In reviewing a judgment of nonsuit, we must view the facts in the light most favorable to the plaintiff. (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 347.)

Floyde has not provided a reporter's transcript of the presentation of trial evidence or the motion for nonsuit. (*Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [omission of reporter's transcript precludes appellant from raising evidentiary issues on appeal].) It has long been the rule that a party challenging a judgment or order bears the burden of showing reversible error by an adequate record. (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574.) A proper record includes a reporter's transcript or a settled statement concerning the order challenged on appeal. (*Ibid.*) Although Floyde is appearing in propria persona, he is not exempt from the rules governing appeals. (*Ibid.*) "A self-represented party is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants having attorneys." (*Ibid.*)

In the absence of a proper record, which would include either a reporter's transcript or a settled statement, we must presume the trial court acted properly. Floydé has not met his burden on appeal by establishing reversible error with a proper record. (*Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 31 [as is the case with attorneys, self-represented litigants must follow the rules of procedure].)

The face of Floydé's complaint reflects that any fraud-based cause of action or an action for breach of fiduciary duty is precluded by the statute of limitations. (§ 338, subd. (d) [three years].) Floydé's complaint states that he was evicted from his auto-wrecking business and that he declared bankruptcy in 1987. Moreover, he brought an action against Gonzales in 1998 alleging similar wrongs regarding the property allegedly purchased from the Mulholland trust.

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

John Nguyen, Temporary Judge\*  
Superior Court County of Ventura

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Antoine Floyd, in pro. per., for Plaintiff and  
Appellant.

No appearance for Defendants and Respondents.

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\* \*(Pursuant to Cal. Const., art. VI, § 21.)