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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ESTATE OF MOON SOOK KIM et al., Plaintiffs and Respondents, v. CHRISTOPHER G. WESTON et al., Defendants and Appellants.	B281109 (Los Angeles County Super. Ct. No. BC494379)

APPEAL from a judgment of the Superior Court of Los Angeles County. Monica Bachner and Soussan Bruguera, Judges. Affirmed.

Christopher G. Weston, in pro. per., for Defendants and Appellants.

Zeiler Law Group, APC, and Kerry P. Zeiler for Plaintiffs and Respondents.

Following a bench trial, appellants Christopher G. Weston and his alter-ego company Western Law Connection Corp. (together Weston) were found liable for fraud against former clients after intentionally misrepresenting that he was competent to handle their probate and unlawful detainer cases. Judgment was entered against him in the amount of $808,620, based in part on an order imposing issue and evidentiary sanctions against him for purposefully withholding documents during discovery.

Weston appealed, but filed an opening brief and voluminous appellant's appendix that violated numerous procedural rules. In particular, his 66-page opening brief only included a handful of record citations on a few pages, which has completely prevented us from assessing his numerous claims of error. He has therefore failed to carry his burden to show reversible error on appeal, and we affirm.[1] We deny respondents' pending motion to dismiss the appeal but grant their motion for sanctions.

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[1] We previously denied a motion to strike Weston's opening brief and appellant's appendix before respondents' filed their appellate brief. In the motion, respondents argued the opening brief was untimely and argued the brief and the appendix violated a host of appellant procedural rules. We do not revisit the denial of this motion or the timeliness issue, but after reviewing the full briefing, we find the procedural violations compel affirmance of the judgment and justify sanctions against Weston for pursuing a frivolous appeal.

BACKGROUND

The case proceeded to a bench trial on a single claim of fraud. Weston testified, and the court specifically found his testimony inconsistent with its findings was not credible. We take the basic facts from the detailed judgment entered on December 9, 2016, and keep our overview brief.

At the time of the judgment, plaintiff Jeong Hae Kim was the heir and administrator for the estates of her father Moon Sook Kim (father), who died prior to the lawsuit against Weston, and mother Sue Hyun Kim (mother), who died while this case was pending (together plaintiffs). After father died, mother and Jeong[2] retained Weston for father's probate case. A few weeks later, they retained Weston for an unlawful detainer case filed against father's beverage shop.

Weston's practice was mostly personal injury, but he admitted that he told mother and Jeong that he had the ability to handle the probate case, the unlawful detainer case, and "pretty much any civil action." Had Weston told mother and Jeong that he was *not* competent to handle these matters, they would not have retained him. He did not tell them that he had stipulated to incompetence in state bar disciplinary proceedings in 2002 or that he was under investigation by the state bar at the time mother and Jeong retained him.

Weston admitted to making various errors in the probate and unlawful detainer cases and conceded that competent counsel would not have made those errors. Those errors caused mother and Jeong to lose the beverage shop, a business the trial court valued at $405,000.

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[2] We use Jeong's first name for convenience and clarity.

In the judgment, the trial court correctly set out the five elements of fraud: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. (See *Ryder v. Lightstorm Entertainment, Inc.* (2016) 246 Cal.App.4th 1064, 1079.) The court found the falsity, knowledge, and intent elements had been established through an August 28, 2015 order imposing discovery sanctions against Weston, which the court attached to the judgment.

In that sanctions order, the court outlined Weston's prolonged and repeated failure to produce documents, even after the trial court compelled him to do so. The court wrote in the order: "This Order is not made lightly. The court has for several years attempted to convince Defendant to comply with Discovery Obligations and/or follow Court Orders regarding his Discovery obligations. This process has prejudiced plaintiff in having to expend time and money in attorney's fees as well as the inability to present evidence in the possession and control of only Defendant Christopher Weston. At this time, it is clear Mr. Weston is purposefully withholding evidence."

The court imposed sanctions establishing that (1) Weston, the individual, was the alter ego of Western Law Connection Corp.; (2) Weston falsely represented to Jeong and mother that he was competent to represent them in the probate and unlawful detainer cases; (3) he knew the representation was false; and (4) he made the false representation of competence with the intent to deceive and defraud them in order to induce their agreement to retain him. The court imposed evidentiary sanctions that prevented Weston from introducing any evidence on plaintiffs' damages that was not produced during discovery

and any evidence relating to plaintiffs' alter ego claims. Finally, the court imposed a monetary sanction of $7,259.[3]

In the judgment, the court made detailed findings that (1) Weston committed fraud in the inducement to contract; (2) Jeong justifiably relied on Weston's representations; and (3) that reliance was a substantial factor in causing Jeong harm in the form of retaining another attorney to correct the errors in the probate case and losing the beverage shop. It awarded Jeong $808,620.07 in damages, comprised of a retainer paid to Weston, the lost value of the beverage shop, third party attorney's fees, prejudgment interest, and emotional distress. The court specifically found that Jeong had "proven by clear and convincing evidence that Weston engaged in conduct that was despicable" and "knowingly engaged in fraud, malice and oppression," but it declined to award punitive damages due to the lack of evidence of Weston's net worth.

Weston filed motions for a new trial and to vacate the judgment, which the trial court denied in a detailed minute order. Weston appealed.

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[3] On November 14, 2016, the court imposed another monetary sanction of $15,925 on Weston pursuant to Code of Civil Procedure section 128.5. The sanction was imposed because he filed two frivolous motions to reconsider and because he asserted the right to use documents barred by the August 28, 2015 sanctions order. It appears the court later denied a motion to reconsider this second sanctions order on December 14, 2016.

DISCUSSION

I. Plaintiffs' Motion to Dismiss is Denied

Plaintiffs move to dismiss Weston's appeal as untimely. Their argument proceeds as follows: (1) The August 28, 2015 sanctions order was immediately appealable because part of it ordered Weston to pay sanctions over $5,000. (Code Civ. Proc., § 904.1, subd. (a)(12) [order to pay monetary sanction over $5,000 immediately appealable].) (2) Having failed to immediately appeal that order, Weston cannot now challenge it in the appeal from the final judgment. (See Code Civ. Proc., § 906 [reviewing court not authorized "to review any decision or order from which an appeal might have been taken"]; *In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8 (*Baycol*) [if order is appealable, appeal must be taken or right to appellate review is forfeited].) (3) Without a timely appeal of the sanctions order, the facts deemed established by the issue sanctions are now res judicata. (4) Because the " 'principal' focus" of Weston's appeal are the facts established by the order, his appeal of the final judgment is untimely.[4]

Plaintiffs' argument falters at the first step. Only the monetary portion of a sanctions order is immediately appealable, unless other portions of the sanctions order are inextricably intertwined. (See *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1433 [limiting appellate review of a sanctions order to monetary portion unless non-appealable portions inextricably intertwined]; see also *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 940.) Plaintiffs have not attempted

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[4] Plaintiffs present a similar argument in their respondents' brief, contending that Weston's failure to immediately appeal bars him from challenging the issue and evidentiary sanctions.

to make that showing here. Thus, Weston's failure to immediately appeal only bars him from challenging the portion of the order imposing monetary sanctions. (Code Civ. Proc., § 906; *Baycol, supra,* 51 Cal.4th at p. 761, fn. 8.) We decline to dismiss his appeal on this ground.[5]

Plaintiffs also seek to dismiss Weston's appeal based on the "disentitlement doctrine," which "enables an appellate court to stay or dismiss the appeal of a party who has refused to obey the superior court's legal orders." (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 460.) Plaintiffs' request is based in part on their incorrect view of the scope of appealability of the sanctions order and in part on the sanctions imposed by the trial court. Because we conclude below that we must affirm the judgment based on Weston's failure to show reversible error, we decline to dismiss his appeal pursuant to the disentitlement doctrine.

II. Weston's Briefing and Appendix Are Inadequate to Show Reversible Error

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609 (*Jameson*).) Absent a showing of error, " 'all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which

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[5] As noted, the trial court also imposed monetary sanctions on Weston in a November 14, 2016 order. We may not review any challenge to that order because Weston did not separately appeal it.

would have authorized the order complained of, it will be presumed that such matters were presented." ' " (*Id.* at pp. 608–609.)

An appellant is bound by many rules of appellate procedure designed to facilitate our review of claims of reversible error. Most pertinent here, an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(c).) Indeed, "[i]t is axiomatic that an appellant must support all statements of fact in his briefs with citations to the record." (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29 (*Pierotti*).)

Of course, those citations are only as useful as the record to which they refer, so if an appellant elects to proceed by way of an appellant's appendix, the appendix must be consecutively numbered (Cal. Rules of Court, rules 8.124(d)(1), 8.144(b)(2)(D)), must contain alphabetical and chronological indexes at the beginning of the first volume (Cal. Rules of Court, rule 8.144(b)(5)(A)), must be limited to 300 pages per volume (Cal. Rules of Court, rule 8.144(b)(6)), and must not contain either reporter's transcripts or documents that are unnecessary for the proper consideration of the issues (Cal. Rules of Court, rule 8.124(b)(3)(A)–(B)).

Weston contends the trial court made eight erroneous rulings throughout the case, including rejecting his attacks on the pleadings, issuing sanctions, entering judgment based on insufficient evidence, and denying his post-judgment motion for a new trial. For many of these issues, Weston must make record-focused showings that the trial court abused its discretion or that the court's factual findings were not supported by substantial

evidence. (See, e.g., *David v. Hernandez* (2014) 226 Cal.App.4th 578, 590 [denial of new trial motion reviewed for abuse of discretion and errors of law reviewed de novo]; *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390 [discovery sanctions reviewed for abuse of discretion and factual determinations reviewed for substantial evidence]; *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1497 [motion to strike reviewed for abuse of discretion]; *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188 [review for substantial evidence presents " ' "daunting burden" ' " on appellant to show there is not " ' "any substantial evidence contradicted or uncontradicted" ' " to support judgment].) Even for rulings subject to de novo review, Weston is obligated to support any claims of error by adequately raising and briefing them with citations of the record and supporting authority. (*Mark Tanner Construction, Inc. v. Hub Internat. Ins. Services, Inc.* (2014) 224 Cal.App.4th 574, 583.)

Weston's opening brief and appellant's appendix violated all of the rules mentioned above. For example, his opening brief is 66 pages long,[6] but between pages 17 and 66, it does not contain a *single* intelligible citation of the record. That encompasses the entire statement of facts and argument sections. In the five pages where he includes citations of the appendix, he does not include volume numbers, which is problematic because

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[6] Weston certified his brief contained 15,905 words, which violates the rule limiting briefs in civil appeals to 14,000 words absent permission to exceed that number. (Cal. Rules of Court, rule 8.204(c)(1).) Weston cites rule 8.360(b)(1) of the California Rules of Court in his Certification of Word Court, but that rule applies to criminal appeals.

he did not consecutively paginate the volumes. Under the "STATEMENT OF THE CASE" heading, one entire page contains record references that omit *both* volume and page numbers, reading as "Appellants' Appendix pages ". (Blank spaces in original.) Later in the brief, the page and line numbers are omitted from citations of the reporter's transcript so they read: "Reporters Transcript Page ____ line ____ to line ____." (Underscores in original.) We also note the brief is filled with typographical and grammatical errors, rendering portions of it nonsensical.

The appellant's appendix compounds these problems. It consists of seven volumes, explicably numbered 1 through 5, 5A, and 6. Volume 1 omits an index, so we have no roadmap to locate any particular document. Five of the volumes contain more than 300 pages, and beyond volume 1, none of the volumes are consecutively paginated. Volumes 5 and 6 appear to be identical. Volume 5A contains hundreds of pages of "uncertified rough draft" reporter's transcript, which appears to duplicate the formal reporter's transcript submitted as part of the record.[7] Perhaps most troubling, the appellant's appendix contains hundreds and hundreds of pages, and yet in his opening brief he cites only nine documents. Either he believes most of the documents he elected to include are not necessary to his appeal, or he believes they are important but failed to cite them. In either case, we are neither obligated nor inclined to search the record on our own in order to evaluate his claims.

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[7] In plaintiffs' motion for sanctions, plaintiffs' counsel declared that Weston did not serve plaintiffs with volumes 2 and 3 of the appellant's appendix, even after counsel left a message with Weston's paralegal.

These shortcomings affect his appeal in two ways. We may deem forfeited any matter he has failed to adequately support with record citations, which under the circumstances would be *all* of his arguments. " 'As a general rule, "The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment." [Citations.] It is the duty of counsel to refer the reviewing court to the portion of the record which supports the appellant's contentions on appeal. [Citation.] If no citation "is furnished on a particular point, the court may treat it as waived." [Citations.]' " (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384.)

Even if we opted to overlook waiver, Weston still bears the burden to show reversible error. Weston's claims rest on hundreds of pages briefs, orders, and evidence in the voluminous appellant's appendix. And yet, he cites nearly none of them. In the absence of cogent arguments based on specific record citations, we must presume the trial court's orders and judgments are correct, so Weston has not carried his burden of showing reversible error. (*Jameson, supra,* 5 Cal.5th at pp. 608–609.) We are compelled to affirm the judgment.

III. Sanctions Are Warranted

Plaintiffs have filed a motion seeking $22,515 in appellate attorney's fees as a sanction for Weston's unreasonable violations of appellate rules and for pursuing a substantively frivolous appeal. We grant the request. We impose an additional $8,500 payable to the clerk of this court for the costs of processing this appeal.

Sanctions should be imposed sparingly, but "[w]hen it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." (Code Civ. Proc., § 907.) An appeal may be frivolous based upon either subjective or objective criteria. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649.) "Thus, an appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable person would agree that the appeal is totally and completely without merit." (*Id.* at p. 650.)

The Rules of Court similarly enable us to impose sanctions on an attorney or party for "[t]aking a frivolous appeal or appealing solely to cause delay" or "[c]omitting any other unreasonable violation of these rules." (Cal. Rules of Court, rule 8.276(a).) Thus, "[w]e may impose monetary sanctions for ' "any unreasonable infraction of the rules governing appeals . . . as the circumstances of the case and the discouragement of like conduct in the future may require." ' " (*Pierotti, supra,* 81 Cal.App.4th at p. 29.)

Weston's violations of appellate rules in his opening brief and appellant's appendix alone justify sanctions. (*Pierotti, supra,* 81 Cal.App.4th at p. 33 [imposing sanctions on "separate bases" of rule violations and frivolousness].) Frivolousness is somewhat less clear since we are unable to adequately assess the merits of his claims. But his unreasonable rule violations do not stand alone, and they can certainly "support our conclusion that this appeal was frivolous or taken for the purposes of delay or harassment." (*Ibid.*) One of the major rulings in the trial court was the imposition of significant issue and evidentiary sanctions

against Weston for purposefully withholding evidence. Judging from the court's detailed findings in that order, those sanctions were justified and warranted. Yet, Weston provided no basis whatsoever to show that order was an abuse of discretion or unsupported by substantial evidence.

Nonetheless, he proceeds to attack the sufficiency of the evidence supporting liability and damages in the judgment—major portions of which were *conclusively established* by the earlier discovery sanctions—but he has provided no way for us to assess that against the sizeable trial record. His failure to fulfill his most basic appellate responsibilities certainly supports an inference that he harbored no real hope of prevailing on appeal, but simply sought to delay finality.

To compound these problems, Weston, a licensed attorney and active member of the State Bar, has levied unsubstantiated personal attacks on the trial judges presiding over his case. In his opening brief, he writes (all errors in original): "The Appellants submit that the record in this case evidence multiple examples of incompetence, bias and error on part of the trial judges adjudicating this action that denied the Defendants of their due process." He continues (again, all errors in original): "Here, the record is replete with evidence of judicial incompetence and bias from the inception of the honorable Judge Bruguera's administration of this case by her failure to make a ruling on the defendants motion for judgment on the pleadings, incorrect rulings in discovery proceedings, impartiality at trial, and basing her finding for a judgment on false information and punishing the Defendants for attempting to get a ruling on the judgment on the pleadings and attempting to get evidence on the record with monetary sanctions pursuant to California Code of Civil

Procedure section 128.5." He repeats these attacks in his reply brief.

Of course, he provides no support for these claims, despite claiming the record is "replete" with such evidence. He is simply upset that the trial judges repeatedly ruled against him. It is completely inappropriate to direct a wholly unsupported and frivolous personal attack on the trial judges who, by all appearances, fairly and methodically responded to his repeated failures and deceptive behavior throughout the proceedings. As another appellate court wrote in the context of a frivolous challenge to an arbitration award, "an opening brief is not an appropriate vehicle for an attorney to 'vent his spleen' after losing at an arbitration hearing. This is because, once the brief is filed, both the opponent and the state must expend resources in defending against and processing the appeal. Thus, an unsupported appellate tirade is more than just words on paper; it represents a real cost to the opposing party and to the state." (*Pierotti, supra,* 81 Cal.App.4th at pp. 32–33, fn omitted.) "[S]uch an outburst, when committed to the pages of an opening brief, becomes an expensive proposition for all those concerned. Justice requires that those costs fall on the person (or persons) who unreasonably caused them." (*Id.* at p. 33.) The same is true here.

Nor has Weston given any explanation for his conduct on appeal. In his opposition to plaintiffs' sanctions motion, he devotes a single paragraph to responding to the rule violations, pointing us to his declaration and arguing the violations were "only technical and did not prejudice the Respondents." In his declaration, he discusses only the technical problems he

experienced with electronically filing his documents; he does not address the substantive problems with his brief and appendix.

Were the record different, we *might* be inclined to overlook Weston's dramatic appellate shortcomings, perhaps attributing them to an overworked and understaffed attorney. That does not excuse these violations, but perhaps it would explain them. Yet, the trial court's findings tell an unfortunate story of deception and recalcitrance: Weston intentionally defrauded plaintiffs, causing the loss of their valuable family business, and purposefully withheld evidence, no doubt to conceal his fraudulent conduct. The trial court found his behavior "despicable." Considering that he has not substantiated his claims on appeal *and* he has personally attacked the trial judges—even after the trial court has sanctioned him *twice*—the ineluctable conclusion is that this pattern continues.

In setting the amount of sanctions on appeal, we consider " ' "the amount of respondent's attorney's fees on appeal; the amount of the judgment against appellant; the degree of objective frivolousness and delay; and the need for discouragement of like conduct in the future." ' " (*Kleveland v. Siegel & Wolensky, LLP* (2013) 215 Cal.App.4th 534, 558.) Weston has not challenged the declaration from plaintiffs' appellate counsel supporting their request for $22,515 in attorney's fees expended on appeal. Considering the relevant factors, we find the amount reasonable. We also impose $8,500 payable directly to the clerk of this court to reimburse costs of processing Weston's appeal. (See *ibid.* [imposing $52,727.56 in sanctions payable to respondent and $8,500 payable to appellate court clerk].)

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

Sanctions in the amount of $31,015 are imposed on Weston, with $22,515 payable to respondents and $8,500 payable to the clerk of this court within 90 days of the date of the remittitur.

Having found Christopher G. Weston, State Bar No. 174808, has violated court rules in such a degree as to require sanctions in the amount of $31,015, we order Weston and the clerk of this court to *each* forward a copy of this opinion to the State Bar upon return of the remittitur. (Bus. & Prof. Code, §§ 6086.7, subd. (a)(3) & 6068, subd. (o)(3); *Pierotti, supra,* 81 Cal.App.4th at pp. 37–38.)

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.