

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

GARY BLANKSTEIN et al.,

Plaintiffs and Respondents,

v.

JON WILHELM,

Defendant and Appellant.

B280886

(Los Angeles County
Super. Ct. No. EC063302)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Curtis A. Kin, Judge. Affirmed.

Daryl Jon Wilhelm, in pro. per., for Defendant and Appellant.

Carlson & Cohen, Earle H. Cohen for Plaintiffs and Respondents.

Jon Wilhelm, individually and d/b/a Valley Home Inspection (Wilhelm), appeals from the judgment entered in favor of respondents Gary Blankstein and Barbara Blankstein (collectively, Respondents) following a court trial. Wilhelm was self-represented at trial and remains so on appeal. Because of deficiencies in his opening brief, his failure to designate a reporter's transcript, and the limited documents he designated for inclusion in the Appellant's Appendix, we affirm.

BACKGROUND¹

In January 2013, Respondents hired Wilhelm, a certified CREIA² home inspector, to conduct an inspection of a property they had contracted to purchase. Wilhelm understood Respondents would rely on his findings in making their decision to purchase the property, including whether to negotiate a different price with the seller. Respondents' contract with Wilhelm included his inspection of a block wall on the south side of the property. Wilhelm informed Respondents the block wall was in good condition, without any further explanation or qualification. Respondents later determined the block wall required substantial repairs in excess of \$70,000.

On December 5, 2014, Respondents filed a complaint against Wilhelm in Los Angeles County Superior Court alleging causes of action for: (1) breach of contract, (2) negligence, and (3) negligence per se.³

¹ The factual background is derived from the trial court's written decision, dated November 18, 2016, a copy of which is included in the Appellant's Appendix.

² CREIA stands for the California Real Estate Inspection Association.

³ Respondents' claims for negligence and negligence per se are not part of this appeal.

On December 23, 2016, following a three-day bench trial, the trial court entered judgment in favor of Respondents for their breach of contract claim, awarding damages in the amount of \$10,000. Prior to entering judgment, the trial court rendered a written decision.

In its decision, the trial court ruled Respondents entered into a contract with Wilhelm to inspect a property, which included inspection of a block wall on its south side. It further ruled Wilhelm breached the contract by failing to inspect the block wall using a reasonable standard of care, thereby entitling Respondents to damages “in the form of a price reduction from the seller of the [p]roperty.” In calculating the amount of damages, the trial court relied on, among other things, Respondents’ testimony that in response to their post-inspection requests, the seller reduced the sale price of the property by a “minimal amount.” The trial court thereby concluded the appropriate measure of damages was \$10,000, which was the “reasonable approximation of what the seller ultimately would have offered and the [Respondents] would have accepted for a sales price adjustment to account for the structurally sound wall that [was] not code-compliant.”

Wilhelm filed a timely appeal. The record on appeal consists of an Appellant’s Appendix, containing the following nine documents: (1) Appellant’s Notice Designating Record on Appeal, (2) Judgment After Bench Trial, (3) Order Re: Defendant’s Objections to Court’s Decision & the Proposed Judgment, (4) Defendant Jon Wilhem’s [*sic*] Objections to Statement of Decision and Proposed Judgment, (5) Decision Following Court Trial, (6) Curricula Vitae of Randall Akers, (7) Exhibit B to Defendant’s Answer, (8) Defendant Jon Wilhem’s [*sic*] Answer and Objections to Plaintiff’s Unverified Complaint and Errata, and (9) Respondents’ Complaint. Wilhelm also elected to proceed on appeal without a reporter’s transcript.

DISCUSSION

“A judgment or order of the lower court is *presumed correct* . . . and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, original italics.) “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.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) “Consequently, plaintiff [also] has the burden of providing an adequate record.” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) When a party has elected to proceed with the appeal solely on a clerk’s transcript [or appellant’s appendix], we treat it as an appeal on the “judgment roll.” (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) For an appeal on the judgment roll, we conclusively presume sufficient evidence was presented to support the trial court’s findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)⁴

Wilhelm’s opening brief lacks necessary citations to the trial court record, in direct violation of California Rules of Court, rules 8.204(a)(1)(C) and 8.204(a)(2)(C). His arguments are overlapping, are combined with snippets of case law and vague challenges to portions of the trial court’s ruling on other matters, and fail to explain how pertinent legal principles apply to the facts of the case. “It is not the court’s duty to attempt to

⁴ These rules also apply where a person is self-represented. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 [“Even though appellant is in propria persona, he is held to the same ‘restrictive procedural rules as an attorney’”].)

resurrect an appellant's case or comb through the record for evidentiary items" (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 10.) For example, Wilhelm takes issue with the trial court's ruling in connection with his "cross-complaint"; however, the Appellant's Appendix does not include any documents related to a cross-complaint. When "the record does not contain all the documents . . . we decline to find error on a silent record." (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.)

Wilhelm contends the trial court abused its discretion by: (1) finding breach of contract under the CREIA standards, (2) allowing the opinion of a nonexpert, and (3) awarding speculative damages.⁵ We reject these assertions because none is supported by the record. Without a reporter's transcript, we do not know what evidence was presented at trial. In these circumstances, "[t]he question of the sufficiency of the evidence to support the findings is not open." (*Allen v. Toten, supra*, 172 Cal.App.3d at p. 1082.)

Given the sparse record, the judgment is affirmed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994 ["With no error or other defect claimed against the orders appealed from, the Court of Appeal was presented with no reason to proceed to the merits of any unraised 'points'—and, a fortiori, no reason to reverse or even modify the orders in question."].)

⁵ We note the trial court's award of damages based on an "approximation" does not by itself render damages to be speculative. "[T]he rules governing recovery of contract damages are flexible and "leav[e] much to the individual feeling of the court created by the special circumstances of the particular case." [Citation.] [Citation.] Damages cannot be calculated with absolute certainty, and California law 'requires only that some reasonable basis of computation . . . be used, and the damages may be computed even if the result reached is an approximation.' [Citation.]" (*SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 570.)

DISPOSITION

The judgment is affirmed. Respondents shall be entitled to their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

CHAVEZ, J.

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