

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

PABLO LAZARO,

Plaintiff and Appellant,

v.

VENTURA COUNTY CIVIL SERVICE
COMMISSION,

Defendant and Respondent;

VENTURA COUNTY SHERIFF'S
DEPARTMENT et al.,

Real Parties in Interest and Respondents.

2d Civil No. B233381
(Super. Ct. No. 56-2008-00326712-CU-PT-
VTA)
(Ventura County)

Real parties in interest Ventura County Sheriff's Department (Sheriff's Department) and County of Ventura (County) terminated Pablo Lazaro's employment as a deputy sheriff after he failed to pass field patrol training. The Ventura County Civil Service Commission (Commission) upheld his termination. Lazaro appeals from the trial court's denial of his petition for writ of mandamus. We conclude substantial evidence supports the trial court's decision and affirm.

FACTS AND PROCEDURAL BACKGROUND

Pablo Lazaro was a reserve peace officer for two years before becoming a deputy sheriff in 2000. After completing the Sheriff's Department's basic training program, Lazaro was assigned to duties as a custodial deputy at various jails run by the County, a routine assignment for a deputy fresh out of the Sheriff's academy. He remained in that status until he was assigned to patrol duties in September 2006. The Sheriff's Department's policy is to reassign all custodial deputies to patrol as part of their career path. Captain Ron Nelson, who oversaw the Sheriff's Department's headquarters and patrol unit in Ventura, testified that deputies "start off in the jail right out of the academy. You do your time. And then you work your way out to a patrol station. You complete your patrol training. As members of our department promote, they are sent back into the jails."

Before qualifying for patrol duty, Lazaro had to successfully complete a field training program prescribed by the Commission on Peace Officer Standards and Training (POST). (See Cal. Code Regs., tit. 11, § 1005, subd. (a)(1) [minimum standards for training of entry level peace officers].) The Sheriff's Department's field training program, which is largely on-the-job training, ordinarily lasts 19 weeks, nearly twice as long as the 10-week minimum required by POST regulations. After a period of classroom training, the trainee must complete four separate training phases, each under the supervision of a field training officer (FTO). Each phase lasts approximately a month, and at the end of the fourth phase, the trainee is expected to be able to perform as a patrol deputy without supervision. Ordinarily, a trainee shows consistent improvement throughout the phases, and remedial extensions are necessary in fewer than 10 percent of cases. Only a small fraction of that 10 percent fails to successfully complete the program.

Lazaro experienced performance difficulties in the first phase, which was extended from four to seven weeks. At the end of the fourth phase, Lazaro was deemed incompetent to function on his own as a patrol officer. Ultimately, the Sheriff's Department extended his training for three additional phases. First, it granted him a

remedial four-week phase and assigned him to a fourth FTO. After he continued to display deficiencies in the performance of his duties, he was assigned to a second remedial four-week extension with his fifth FTO. When Lazaro again failed to meet acceptable performance standards, the Sheriff's Department afforded him a third remedial four-week extension, assigning him to a very experienced FTO. After seven full training phases, totaling 31 weeks and involving six FTOs, Captain Nelson, as the head of the patrol unit, deemed Lazaro incompetent to work as a solo patrol deputy and recommended his termination in June 2007. Lazaro was dismissed following a *Skelly*¹ hearing. He appealed to the Commission.

Over a total of 10 days, the Commission heard testimony from 12 witnesses, including Lazaro's six FTOs and his expert, and reviewed the daily, weekly and monthly evaluations documenting his field training. Lazaro contended the Sheriff's Department caused his poor performance, partly because of errors in the administration of the field training program. The Sheriff's Department and County rebutted this evidence by demonstrating Lazaro's deficiencies in field training were nearly identical to the problems he had displayed during his first attempt to complete the Sheriff's Department's basic training academy and also during his probationary period as a deputy sheriff.

The Commission upheld Lazaro's termination, concluding that he was not competent to work as a patrol deputy and that any flaws in the training program were outweighed by his deficiencies. The Commission stated: "Even if the FTOs had been properly trained in the use and application of the new POST manual, and had conducted all training exactly as specified, Petitioner still would have failed his training because he lacks the abilities needed to be a patrol deputy. His shortcomings were magnified by his continued denial that he had any such deficiencies."

Lazaro petitioned the trial court for a writ of administrative mandamus reversing the Commission's decision. On reviewing the entire record, the trial court

¹ (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.)

denied the petition, determining Lazaro's deficiencies were his alone and that the Sheriff's Department had done all it could do in terms of remediation. The trial court observed: "Although the training program did not strictly comply with POST standards, there is ample evidence in the record that Mr. Lazaro's FTO's worked hard with him on a daily, and on a one-on-one basis to give him the skills he needed to be a patrol deputy. . . . None of this, however, was successful. To argue that the County should have done more to get Mr. Lazaro qualified ignores the considerable time and effort that was invested in him without discernable effect." Lazaro appeals.

DISCUSSION

Standard of Review

In administrative mandamus actions involving the termination of public employees, the "trial court exercises its independent judgment on the evidence and examines the entire administrative record" (*Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 45.) It "resolves evidentiary conflicts and is required to assess witnesses' credibility and to arrive at its own independent findings of fact." (*Ibid.*)

Lazaro contends our review on appeal is de novo, and that we must "determine if [he] was a borderline patrol deputy" and "weigh the reasonableness of giving [him] a 'second chance' at patrol training" That is not our function. Where, as here, there are factual and evidentiary conflicts, the trial court's "determination of culpability is conclusive and binding on the reviewing court." (*Deegan v. City of Mountain View, supra*, 72 Cal.App.4th at p. 45.) "On appeal, we review the record to determine whether substantial evidence supports the trial court's conclusions, and we resolve all conflicts and indulge all reasonable inferences in favor of the prevailing party." (*Ibid.*) We do not substitute our reasonable inferences for those drawn by the trial court. (*Ibid.*; *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 659.) Nor do we redetermine the credibility of witnesses. (*Deegan*, at p. 45.)

Substantial Evidence Supports the Judgment

Lazaro's writ petition raised two issues: the adequacy of the field patrol training program and his performance within that program. Lazaro asserts that if the

program was not properly administered, his performance cannot be properly evaluated. We disagree. Substantial evidence supports the trial court's conclusion that even if the training had been conducted exactly as specified in the POST regulations, Lazaro still would have failed because he lacks the abilities necessary to perform as a patrol deputy.

The job of a deputy sheriff is not an easy one. The risks in deploying an unqualified deputy are obvious. "Such officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them." (*Christal v. Police Commission* (1939) 33 Cal.App.2d 564, 567.) "POST is a state-funded organization designed to insure professional standards in law enforcement. Penal Code section 13500 et seq. describes POST's role in setting standards and guidelines pertinent to the selection and training of peace officers." (*Diffey v. Riverside County Sheriff's Department* (2000) 84 Cal.App.4th 1031, 1034, disapproved on other grounds in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1031, fn. 6; see also Pen. Code, § 13510.) The Sheriff's Department has adopted these standards.

The Sheriff's Department acknowledges Lazaro's training did not strictly comply with POST standards. Among other things, POST requires that trainee performance be documented through daily observation reports prepared by the FTO and then reviewed with the trainee. (Cal. Code Regs., tit. 11, § 1004, subd. (a)(6)(A).) This did not always occur here. At times, the daily reports were delayed or not reviewed with Lazaro.

This may have been an issue if Lazaro's field training did not proceed beyond the minimum 10-week period prescribed by POST or even the typical 19-week period adopted by the Sheriff's Department. (See Cal. Code Regs., tit. 11, § 1004, subd. (a)(1).) To address the various performance deficiencies, the Sheriff's Department extended Lazaro's training to a total of seven months. During that period, six different FTOs observed, quantified and documented his performance in nearly 1,000 pages of reports. As the trial court noted, "[s]ome [FTOs] were probably better than others. Some

had a better understanding of POST standards than others. All testified that their aim was [to] see Mr. Lazaro successfully complete his training."

Lazaro was unable to succeed in his field training because he could not expeditiously write informative reports, had difficulty multi-tasking, exercised poor judgment and lacked familiarity with the Penal and Vehicle Codes. As the Commission observed: "While [these] deficiencies may have been acceptable in the custodial atmosphere of a jail with ample support available from fellow deputies, such is not the case for a deputy alone in a patrol car."

Lazaro's fourth FTO, Deputy Steven Hanie, testified that on their first day of training, Lazaro created a dangerous situation by failing to broadcast his location and then running after suspects with his gun in hand. Hanie also described a basic high-speed driving error in which Lazaro nearly caused an accident with the lead patrol vehicle. Other FTOs observed Lazaro coercing consent to search, aggressively questioning an innocent person, trashing a vehicle during a search, violating basic traffic laws and destroying evidence. Lazaro compounded these problems by denying any deficiencies in his performance. Captain Nelson testified that instead of concentrating on learning the material, Lazaro seemed "more interested in complaining about the people that were trying to teach him versus taking it upon himself to go out and actually trying to apply this stuff and getting through the training."

The trial court correctly determined that no authority exists for the proposition that the lapses in POST training standards invalidated the training program itself, requiring Lazaro to be retrained in a fully compliant program. Errors in the process of terminating a permanent employee generally are subject to a harmless error analysis. (See *Hinrichs v. County of Orange* (2004) 125 Cal.App.4th 921, 928; *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1040.) Lazaro has not demonstrated his termination was so fraught with error that we must disregard his incompetence in performing patrol duties over the course of seven months. To the contrary, the record reflects the Sheriff's Department made extraordinary efforts to qualify him for such duties. As the trial court remarked, "[t]o argue that the County should have done more to get Mr. Lazaro qualified

ignores the considerable time and effort that was invested in him without discernable effect."

Lazaro contends the trial court spent insufficient time analyzing the voluminous administrative record. The record does not support this contention. The trial court noted the record is "unusually lengthy, running in excess of 2500 pages," and stated "[t]he court has read and reviewed all of it." The trial court's detailed ruling reflects its understanding of the testimony and evidence presented at the hearing.

Lazaro suggests his termination was the result of a conspiracy spearheaded by Sergeant Mike Hasty, and requests that we remand the matter for discovery on this "new theory." This claim was not raised in either the administrative proceeding or trial court, and thus is waived on appeal. (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1381 [failure to raise issue in trial court forfeits the point on appeal].) Moreover, Lazaro presents no facts supporting this theory other than a lengthy, first-person narrative in his opening brief. His attempt to supplement the record with additional "evidence" is improper. We do not consider facts outside the record on appeal. (Cal. Rules of Court, rule 8.204(a)(2)(C); *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.)

We have reviewed Lazaro's remaining contentions, many of which were not raised in the trial court, and conclude he has not shown error.

DISPOSITION

The judgment is affirmed. Real parties in interest shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Henry J. Walsh, Judge
Superior Court County of Ventura

Pablo Lazaro, in pro. per., for Appellant.

No appearance for Respondent Ventura County Civil Service Commission.

Leroy Smith, County Counsel, Thomas W. Temple, Assistant County
Counsel, for Real Parties in Interest.