Filed 10/24/19 Khashan v. State Farm Mutual Auto. Ins. Co. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MIKAIL KHASHAN, Plaintiff and Appellant, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY et al., Defendants and Respondents.	B290652 (Los Angeles County Super. Ct. No. BC641485)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

Mikail Khashan, in pro. per., for Plaintiff and Appellant.

Shaver, Korff & Castronovo and Michael J. O'Neill for Defendants and Respondents State Farm Mutual Automobile Insurance Company and Charlotte Knudsen.

Mikail Kashan, who is self-represented, appeals from a judgment following entry of summary judgment in favor of defendant State Farm Mutual Automobile Insurance Company (State Farm), as well as a judgment following the trial court's order granting of a motion for judgment on the pleadings (MJOP) in favor of a State Farm employee, defendant Charlotte Knudsen. Kashan challenges the judgments on several grounds, none of which has merit. Accordingly, we affirm.

FACTUAL BACKGROUND

On December 2, 2013, Kashan was injured after his car was "rear ended" by a car driven by an insured of State Farm (the accident).[1] In May 2014, Motaz Gerges, the attorney then representing Kashan, contacted State Farm to report that he represented Kashan in his claim for injuries suffered as a result of the accident. Later that month, State Farm acknowledged receipt of Kashan's claim and confirmed that its insured had a valid liability policy in force at the time of the accident.

Between July 2014 and March 2015, State Farm wrote to Gerges multiple times asking him to contact State Farm to discuss Kashan's claim, provide the names of medical providers who treated Kashan for injuries suffered in the accident, and requesting that Kashan authorize those providers to release information regarding the nature and

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[1] Kashan subsequently sued defendant Geico General Insurance Company (Geico), which declined to pay the claim. We need not discuss that litigation.

severity of Kashan's injuries and the status of his treatment for those injuries. State Farm received no response to this correspondence. In April 2015, Knudsen was the claims specialist assigned by State Farm to handle Kashan's claim. On April 22, and August 15, 2015, she wrote again to Gerges seeking information regarding the status of Kashan's claim, and requested again that Gerges provide Kashan's medical bills and reports to State Farm so it could evaluate the claim. Knudsen received no response to this correspondence.

On November 6, 2015, Gerges wrote to State Farm demanding payment of $250,000 (within two weeks) to resolve Kashan's claim. Documentation accompanying Gerges' letter reflected that Kashan had incurred $17,284.50 in medical expenses as a result of the accident. The remainder of Kashan's $250,000 demand included $155,515.50 for general damages, and $77,200 for future medical expenses. Knudsen contacted Geico and spoke with defendant John Sudul, a Geico claims representative, to confirm that Kashan had liability coverage at the time of the accident. Sudul informed Knudsen that Geico was unable to confirm that Kashan had liability coverage at the time of the accident.

On November 17 ,2015, Knudsen responded, communicating State Farm's offer of $17,314.50 to Kashan for his "special" medical expenses. Based on the information she received from Geico, Knudsen informed Gerges that State Farm's "analysis and evaluation include the fact that the provisions of Civil Code section 3333.4 apply to this claim. It appears [that] a valid liability insurance policy was not in force on the date of this loss which would provide coverage for [Kashan] in this

accident. Consequently, California law does not permit recovery of non–economic damages."[2] Gerges responded immediately, demanding to know who gave Knudsen the "frivolous and slanderous information" that Geico would not confirm Kashan's liability coverage for Kashan, and threatening to sue Knudsen and her employer if she failed to provide this information. Knudsen responded by letter on November 19, 2015, stating that, "[w]e have spoken with John Sudul with [Geico] as recently as l1/18/15 who again advises [Geico] is unable to confirm [Kashan] had a valid liability policy on the date of this loss."

PROCEDURAL BACKGROUND

Kashan filed the instant action on November 21, 2016, against State Farm, Knudsen, Geico and Sudul. As relevant here, Kashan alleged claims for libel and libel per se against State Farm and Knudsen (a third claim (for slander) was dismissed).

On December 21, 2017, State Farm filed a motion for Summary Judgment or, in the Alternative, Summary Adjudication (MSJ). In support of its MSJ, State Farm requested that the trial court take

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[2] In pertinent part, Civil Code section 3333.4 provides that "in any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if . . . [¶] [t]he injured person was the owner of a vehicle involved in the accident and the vehicle was not insured as required by the financial responsibility laws of this state." (Civ. Code, § 3333.4, subd. (a)(2).)

judicial notice of complaints and declarations filed in this and another action, and documents regarding suspension of the law license of Kashan's former counsel, Gerges (RJN). Kashan opposed the MSJ.

On January 5, 2018, State Farm filed an ex parte application seeking to specially set the MSJ for hearing on March 15, 2018 (26 days before trial), the first available date on the court's calendar on which the MSJ could be heard. The court granted this request, permitting the MSJ to be argued within 30 days of trial.[3] After the MSJ was argued on March 15, 2018, the court took the matter under submission.

On April 2, 2018, Knudsen filed a Motion for Judgment on the Pleadings (MJOP). Knudsen was not served with the complaint until January 2, 2018, after State Farm filed its MSJ. Knudsen's MJOP was supported by two declarations from State Farm's counsel reiterating statements purportedly made by the trial court during proceedings on March 15 and 29, 2018, that the court intended to grant State Farm's summary judgment motion, but had not yet prepared its order. Knudsen argued that, because the allegations alleged against her were identical to those alleged against her employer, she was entitled to judgment in her favor based on the doctrine of law of the case.

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[3] In January 2018, attorneys at the Law Office of Glenn Stern, then Kashan's counsel of record, filed a motion seeking to be relieved as counsel, on the ground that it had become "increasingly and unreasonably difficult" effectively to represent Kashan. The motion was granted on February 27, 2018, subject to the contingency that counsel file an opposition to State Farm's MSJ on Kashan's behalf no later than March 2, 2018.

On April 3, 2018, the trial court granted the MSJ, and ordered State Farm to prepare a judgment and give notice. The MJOP was argued and granted on April 6, 2018. Judgments in favor or State Farm and Knudsen were entered on April 6, 2018.

Meanwhile, a trial date remained set on the claims against Geico and Sudul. A final status conference was conducted on April 9, 2018. Kashan, now self-represented, failed to appear. On "Geico's oral motion, the court order[ed] the case dismissed without prejudice" and ordered Geico to give notice.[4] On April 9, 2018, Geico and Sudul served Kashan with Notice of Ruling on the Final Status Conference, reflecting dismissal of the action against them. That Notice was filed on April 10, 2018, but the record does not reflect that judgment was entered in favor of Geico or Sudul.

On June 11, 2018, Kashan filed a Notice of Appeal from an "order after judgment." The Notice states the appeal is taken from the court's April 9, 2018 order dismissing the action, after Kashan "failed to appear at Final Status Conference while filing with clerk declaration under CCP 170.1 and 170.3 since the court refused to continue trial allowing [Kashan] to retain counsel, after court relieved [Kashan's previous]

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[4] That same date, Kashan filed a "declaration" seeking to have the trial judge (David Sotelo) recused. (Code Civ. Proc., §§ 170.1, 170.3.) Kashan claimed Judge Sotelo was "biased and prejudiced [against Kashan] and . . . constantly ignored laws and authorities." Kashan also said that Judge Sotelo "was and probably" continued to be "a member of [an unnamed] association" to which Kashan's former attorney (Glenn Stern) belonged.

counsel 45 days before trial." (Code Civ. Proc., §§ 904.1, 904.1, subd. (a)(2).)

DISCUSSION

1. *Sufficiency of Kashan's Notice of Appeal*

Kashan's notice of appeal states that it is from an April 9, 2018 order "after judgment" dismissing the action as to Geico and Sudul. At Kashan's request, these parties have been dismissed from this appeal. "Our jurisdiction is 'limited in scope to the notice of appeal and the judgment [or order] appealed from.'" (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846; Cal. Rules of Court, rule 8.100(a)(2).)

The notice of appeal does not state that any appeal is brought from the April 6, 2018 judgments in favor of State Farm and Knudsen. But on June 28, 2018, Kashan attached copies of those judgments to the civil case information statement he filed in this Court in connection with his appeal. A "notice of appeal must be liberally construed[, and] is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2).) This rule of liberal construction is meant to protect the right to appeal if it is "reasonably clear" what judgment or order is under challenge and so long as the respondent could not have been misled or prejudiced. (See *Luz v. Lopes* (1960) 55 Cal.2d 54, 59; *Norco Delivery Service, Inc. v. Owens-Corning Fiberglas, Inc.* (1998) 64 Cal.App.4th 955, 960-961.)

We conclude that it is reasonably clear Kashan intended to appeal from the April 6, 2018 judgments, and will construe the notice of appeal

as identifying and appealing therefrom. State Farm and Knudsen did not raise this procedural defect in their respondents' brief, and we ascertain no prejudice to them from Kashan's technical failure specifically to list those judgments in the notice of appeal. Accordingly, we have jurisdiction to address Kashan's assertions of error.

2. *Summary Judgment Motion*

a. *Standard of Review*

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant must show that plaintiff has not establish and cannot reasonably establish one or more elements of a cause of action, or that it has a complete defense to that claim. (Code Civ. Proc., § 437c, subds. (p)(1) & (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849; *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 499–500.) Once defendant makes this showing, the burden shifts to plaintiff to show that a triable issue of one or more material facts exists. (Code Civ. Proc., § 437c, subd. (p)(2); *Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1153–1154.) To satisfy this burden, the plaintiff shall set forth the specific facts showing that a triable issue of material fact exists as "to that cause of action." (§ 437c, subd. (o)(2).)

We review an order granting summary judgment de novo. (*Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813.) We view

the evidence, including all reasonable inferences supported by that evidence, in the light most favorable to the nonmoving party. (*Hypertouch, Inc. v. ValueClick, Inc.* (2011) 192 Cal.App.4th 805, 818.)

b. *The Trial Court Did Not Err in Granting State Farm's MSJ*

Kashan maintains that State Farm's MSJ was improperly granted for several reasons, none of which has merit.

1. *Procedural Error—MSJ Heard Within 30 Days of Date Set for Trial*

Kashan first insists that the trial court erred in granting State Farm's ex parte request to shorten notice to permit the MSJ to be argued within 30 days of trial. (See Code Civ. Proc., § 437c, subd. (a)(3) [a MSJ "shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise"].) Kashan argues here, as he did below, that State Farm failed to demonstrate good cause to justify scheduling the MSJ hearing within 30 days of trial, and the court made no finding that good cause had been shown to justify advancing the hearing.

Kashan is wrong. The court's order explicitly states that—notwithstanding Kashan's vigorous opposition—the court "consider[ed]" the matter and found that State Farm demonstrated "good cause" and it would "allow[] [the] motion to be heard within 30 days of trial." Trial courts have inherent authority to manage their calendars and control proceedings before them. (*Rutherford v. Owens–Illinois, Inc.* (1997) 16

Cal.4th 953, 967.) Kashan has not shown the trial court abused its discretion in specially setting the hearing on the summary judgment motion. Moreover, there is no indication in the record of Kashan's briefs addressing what prejudice, if any, he claims to have suffered because of the shortened procedural path of the MSJ.

Kashan's reliance on *Robinson v. Woods* (2008) 168 Cal.App.4th 1258 and *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112 is misplaced. Neither case compels a different result. In *Robinson*, the court found the trial court deprived plaintiff of due process in setting a MSJ for hearing 18 days before trial, both because the movant failed to provide valid notice from the outset, and because the court made no determination that good cause existed to advance the hearing date within 30 days of trial. (*Robinson,* at pp. 1260, 1268.) Kashan never claimed he received invalid or untimely notice of the MSJ. To the extent he makes that argument on appeal, we deem the assertion forfeited. (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1261 [""[a]n appellate court ordinarily will not consider procedural defects or erroneous rulings, . . . where an objection could have been but was not presented to the lower court . . . ." [Citation.]"; see *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 696–698 [claim of error based on defective service of notice waived where party argued the merits of an MSJ at its hearing].) Kashan also finds no support in *McMahon*, in which the court acknowledged that Code of Civil Procedure section 437c, subdivision (a), "gives trial courts discretion to shorten . . . the

minimum 30 days before trial when a summary judgment motion can be heard." (*McMahon,* at p. 115.*)*

Issues regarding scheduling of hearings for good cause are reviewed for an abuse of discretion. (See e.g., *Hamilton v. Orange County Sheriff's Dept.* (2017) 8 Cal.App.5th 759, 763-765.) An abuse of discretion is shown only where """no reasonable basis for the action is shown.""" (*Denton v. City and County of San Francisco* (2017) 16 Cal.App.5th 779, 792.) Moreover, a court's procedural error will be reversed only where it "has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) In short, unless prejudice resulting from the error is evident upon the face of the record, a "miscarriage of justice" requires an appellant to demonstrate prejudice. (*Santina v. General Petroleum Corp*. (1940) 41 Cal.App.2d 74, 75-78.)

We find no error in the trial court's issuance of its order specially setting the MSJ hearing within 30 days of trial. State Farm maintained—and Kashan did not dispute—that it set the motion for hearing on the first available date on the court's congested calendar. The court found good cause to specially set the hearing date and, on this record, that conclusion was reasonable. Kashan has not demonstrated how he was prejudiced by the procedural path of State Farm's MSJ. As a result, we find Kashan failed to carry his burden to demonstrate reversible procedural error.

2. *Separate Statement and Request for Judicial Notice*

Kashan also maintains that the MSJ should have been denied because State Farm's Separate Statement did not comply with California Rules of Court, rule 3.1350(c) and (d), a fact State Farm readily acknowledged. State Farm asserted that, because its defenses to each claim alleged against it were premised on the same undisputed material facts, there was no point in repeating identical information multiple times. The trial court reasonably rejected Kashan's assertion that the MSJ should be denied on this basis, because Kashan failed to demonstrate that he suffered prejudice as a result

Nor did the trial court err in partially granting State Farm's RJN. Kashan claims State Farm failed to authenticate documents as to which it sought judicial notice. First, the argument is largely moot because the trial court denied, as superfluous, the bulk of State Farm's RJN as to court documents filed in this and a related case. Second, the court took judicial notice only of documents regarding suspension of the law license of Gerges, Kashan's former counsel, and Kashan does not take issue with that decision. The trial court found appropriately authenticated those documents related to Gerges' license suspension, pursuant to Evidence Code section 452, subdivisions (c), (d) and (h).

3. *Merits of MSJ*

Kashan alleged two substantive claims against State Farm, for libel and libel per se, and requested punitive damages. "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or

other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code, § 45.)

Libel per se is "[a] libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact. . . . Defamatory language not libelous on its face is not actionable unless the plaintiff alleges and proves that he has suffered special damage as a proximate result thereof."[5] (Civ. Code, § 45a.) The assertion that a "plaintiff is guilty of a crime is libelous on its face [citations] and is actionable without proof of special damages. [Citation.]" (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1145, fn. 7.)

State Farm's allegedly defamatory statements are contained in Knudsen's November 17 and 19, 2015 letters to Kashan's former counsel by which State Farm declined to cover any non-economic damages, because Geico had been "unable to confirm" Kashan had "a valid liability insurance policy . . . in force on the date" of the accident, a violation of Civil Code section 3333.4. Kashan alleged that these "false and defamatory statements," published only in the letters to Gerges, were made with "constitutional malice" and in "reckless disregard for

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[5] Special damages are "all damages that plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, or occupation." (Civ. Code, § 48a, subd. (d)(2).)

the truth of these statements." As a result of State Farm's and Knudsen's "reckless, willful or callous disregard" for his rights, Kashan claimed to have "suffered an indelible mark on his reputation," and sought special and general damages in excess of $5,000,000, plus punitive damages, "for his loss of reputation, shame, mortification, hurt feelings, and emotional distress."

The trial court found the statements did not constitute an actionable claim for libel. First, Knudsen's letters did no more than accurately report what she knew to be true, that Sudul had informed her Geico could not confirm that Kashan had liability coverage in effect at the time of the accident.[6] Repetition of a true statement is not libel. (Civ. Code, § 45 [libel is a false and unprivileged publication]; *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 289.)

Second, the only third person to whom Knudsen's letters were "published" was Kashan's attorney, and there is no evidence that Gerges believed the allegedly defamatory statements relayed to him or that they caused Kashan actionably negative consequences. Indeed, after receiving Knudsen's first letter, Gerges immediately and vigorously disputed State Farm's "ludicrous and slanderous offer," and threatened to sue Knudsen and her employer "for slander and defamation for distributing false and defamatory . . . information"

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[6] In a declaration submitted in support of a summary judgment motion by Geico of which trial court took judicial notice, Sudul stated that on November 18, 2015 he informed Knudsen that Geico's investigation related to coverage for the accident was still pending.

unless Knudsen immediately disclosed the source of her information. In addition, Gerges filed the instant action on Kashan's behalf, and continued to prosecute this and at least one other related litigation matter until his law license was suspended.

As the trial court observed, Kashan presented only a self-serving declaration in opposition to the MSJ stating he felt "mortified . . . scorned, humiliated, and embarrassed" after reading the letters, and suffered a "severe blow to [his] reputation." Kashan presented no evidence that he suffered negative consequences as a result of the allegedly defamatory statements to Gerges. Nor does the record contain any evidence that Kashan's lawyer held him in contempt, ridiculed him, or that State Farm or Knudsen did anything to cause Gerges to shun or avoid Kashan.[7] Kashan's conclusory statements regarding his personal feelings of emotional distress do not constitute "special damages" under Civil Code section 48a, which is focused on damage to property and occupation. (Civ. Code, § 48a, subd. (d)(2).) The trial court did not err in concluding that Kashan failed to establish the requisite special damages to sustain a viable claim of libel.

In a well-reasoned, succinct ruling, which we repeat and adopt, the trial court also correctly found that Kashan could not prevail on his

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[7] Gerges' declaration submitted in support of Kashan's opposition to the MSJ, contains no indication he believed the statements in Knudsen's letters were true or that, based on such a belief, he treated his client with contempt or disdain. Indeed, the absence of anything close to disdain for Kashan is readily reflected in Gerges' immediate response to Knudsen's first letter, in which he accused her of stating actionable falsehoods against his client.

claim of libel per se: "[Kashan] asserts that [Knudsen's/State Farm's] statements were facially defamatory because they accused him of the purported crime of lacking an effective automobile insurance policy. Not so. The [November 17, 2015] statement merely states that it appeared to State Farm that no valid policy was in force. Stated slightly differently, the statement communicated State Farm's perception, not an accusation that [Kashan] lacked insurance. The [November 19] statement merely states that Geico was unable to confirm the existence of a valid policy, not that [Kashan] actually lacked auto insurance. The statements are silent on any particular criminal violation.

"Even if the statements could be construed as accusing [Kashan] of violating the financial responsibility statutes under the Vehicle Code, they are more akin to disclosure of underlying facts, rendering the statements not actionable. See *Franklin v. Dynamic Details, Inc*. (2004) 116 Cal.App.4th 375, 388 (stating, 'Accusations of criminal activity, like other statements, are not actionable if the underlying facts are disclosed.' . . . The stated underlying facts were that Geico could not confirm the existence of a policy.

"Further, self-insurance can satisfy the financial responsibility statutes. Veh. Code, § 16020(b)(2). In the absence of stating that [Kashan] was also not self-insured, State Farm could not have accused [Kashan] of violating the financial responsibility statutes.

"Therefore, the statements were not per se libelous."

In conclusion, we find no fault with the trial court's conclusion that State Farm was entitled to summary judgment as "there is no possibility that [Kashan] can prove libel for lack of special damages and lack of a per se libelous statement." It necessarily follows that, because Kashan could not "prove his legal theories, there is also no occasion for punitive damages."

4. *Motion for Judgment on the Pleadings*

A motion for judgment on the pleadings is the equivalent of a general demurrer and governed by the same de novo standard of review. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166.) Properly pled, material facts are deemed true, supplemented by matters as to which the trial court takes judicial notice, to determine whether the plaintiff has stated a cause of action. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777; *Angelucci,* at p. 166.)

Here, identical allegations of defamation are pled against both Knudsen and State Farm. It is undisputed that Knudsen was not served with the complaint until after State Farm filed its MSJ, at which point it was too late for her to join her employer's motion. There is also no dispute that Knudsen's MJOP, filed on April 2, 2018, was premised on the law of the case doctrine, based on the trial court's representations during two prior proceedings that it intended to grant the MSJ.

A party's failure to oppose a motion at the trial court is generally deemed to constitute forfeiture of appellate review. (See *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1602.) ""[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court." Thus, "we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. [Citations.]"' [Citation.]" (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 830.) "'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack. [Citation.]"' (*Ibid.*)

Kashan has forfeited his challenge on appeal to the court's order granting the MJOP for failure to file a written opposition to that motion. Further, we cannot ascertain from the record whether he orally opposed the motion.[8] Because Kashan did not file an opposition to the

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[8] Kashan elected to proceed on appeal without reporter's transcripts from any hearing, so we cannot independently ascertain what the court or parties said during any hearing. Nevertheless, Kashan does not take issue with testimony of respondents' counsel in two declarations regarding the court's twice stated intention to grant the MSJ. (See *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 ["Failure to provide an adequate record on an issue requires that the issue be resolved against

MJOP and provided no reporter's transcript on appeal, we conclude that he forfeited all arguments against the motion. (See *In re Marriage of Eben-King & King, supra,* 80 Cal.App.4th at p. 117 [a party who fails to raise an issue in the trial court waives the right to do so on appeal].)

In any event, given the trial court's determination that Kashan could not prevail on his claims for libel or libel per se against State Farm, we also find no error in the court's conclusion that law of the case also dictated that Knudsen was entitled to judgment on the pleadings. Indeed, Kashan does not argue otherwise on appeal.

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[appellant]."].) It is appellant's burden to provide a reporter's transcript if "an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court." (Cal. Rules of Court, rule 8.120(b).) In cases where abuse of discretion is the standard of review, a reporter's transcript is virtually indispensable. (See, e.g., *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 448 ["The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court abused its discretion"].)

DISPOSITION

The judgment is affirmed. Respondents State Farm and Knudsen shall recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.