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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RONALD LEWIS,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

B282265

(Los Angeles County
Super. Ct. No. TC028550)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian S. Currey, Judge. Affirmed

Ronald Lewis, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Monica N. Anderson, Supervising Assistant Attorney General, Neah Huynh, Acting Supervising Deputy Attorney General, Colin A. Shaff, Deputy Attorney General, for Defendants and Respondents.

I. INTRODUCTION

Plaintiff Ronald Lewis is a former state prison inmate who was sentenced on February 16, 1982, to a 16-year determinative sentence and a consecutive life sentence with the possibility of parole. His life sentence term began on January 26, 1992. He was released on May 23, 2012 and he discharged his five-year parole term in 2017.

On September 30, 2016, plaintiff filed an amended complaint against defendants—State of California, California Department of Corrections and Rehabilitation, Governor Edmund G. Brown Jr., Board of Parole Hearings, Secretary Scott M. Kernan, Guillermo Viera Rosa, and Eric Arnold—for constitutional and civil rights violations, declaratory relief, intentional infliction of emotional distress, conspiracy to commit fraud, and injunctive relief. Plaintiff alleged he was eligible for parole after seven years of serving his sentence because his presentence custody credits for good behavior and participation should have applied to reduce his 16-year determinative sentence.

On January 3, 2017, one or more defendants filed a demurrer, which defendant State of California joined on January 14, 2017. On February 7, 2017, plaintiff filed a response to the demurrer. On February 21, 2017, the court conducted a hearing on the demurrer. On March 6, 2017, after considering the demurrer, opposing papers, and the arguments of the parties, the court entered judgment in favor of defendants and against plaintiff, dismissing the action with prejudice. None of the following documents are included in the record: the demurrer, a transcript or suitable substitute such as an agreed or settled

statement of the February 21, 2017 hearing, or an order granting the demurrer.¹

II. DISCUSSION

On appeal, plaintiff seeks to reverse the judgment of dismissal entered after the trial court sustained the demurrer without leave to amend. “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; accord, *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) An appellant must affirmatively establish error by providing an adequate record. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532.) On appeal, we can sustain the judgment on any grounds set forth in the demurrer. (*Market Lofts Community Assn. v. 9th Street Market Lofts, LLC* (2014) 222 Cal.App.4th 924, 934; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 [“The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken’”].) Here, we cannot assess any such grounds without a copy of the demurrer.

¹ Although plaintiff designated a transcript of the February 21, 2017 proceedings for the record, no court reporter was present at the hearing and therefore no transcript was prepared.

Plaintiff attached the tentative ruling sustaining the demurrer without leave to amend to his opening brief. We disregard all attachments to the brief because they are not permitted under rule 8.204(d) of the California Rules of Court.

Plaintiff therefore has failed to establish that the court erred in granting the demurrer.

Plaintiff additionally argues that the trial court erred in dismissing the case with prejudice. “If the court sustained the demurrer without leave to amend . . . we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment would cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

We will assume that the trial court granted the demurrer without leave to amend since it dismissed plaintiff’s complaint with prejudice. But there is no record of what, if any arguments, plaintiff raised as to how he could amend the complaint to cure its deficiencies. On appeal, plaintiff “request[s] leave to file an amended complaint to add M. Dumalig (CCRA) as a defendant[;] plaintiff intends to remove [d]efendants [Kernan, Rosa, and Arnold].” Without the demurrer or transcript (or a suitable substitute), we cannot evaluate how such an amendment would cure the deficiencies in plaintiff’s complaint. (See *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711 [suggesting amendments may be raised for first time on appeal].) Accordingly, we find the trial court did not err by denying plaintiff leave to amend.

III. DISPOSITION

The judgment is affirmed. Defendants are entitled to recover their costs on appeal from plaintiff Ronald Lewis.

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KIM, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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