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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

PAUL A. BRIDGES,

Plaintiff and Appellant,

v.

LOUISA PENSANTI,

Defendant and Respondent.

2d Civ. No. B284027
(Super. Ct. No. 56-2016-
00485208-CU-BT-VTA)
(Ventura County)

Paul A. Bridges, a California state prisoner, appeals the trial court's order dismissing with prejudice his in propria persona complaint for legal malpractice against his former attorney, respondent Louisa Pensanti. Appellant contends the court exceeded its jurisdiction by dismissing his complaint after he had voluntarily dismissed it pursuant to Code of Civil Procedure section 581. We affirm.

FACTS AND PROCEDURAL HISTORY

In August 2016, appellant filed a complaint alleging that Pensanti committed legal malpractice in defending him against

the criminal charges that led to his conviction and imprisonment. Pensanti did not respond to the complaint and appellant moved for a default judgment in April 2017. On July 7, 2017, the court denied the motion and dismissed the action with prejudice on the ground that appellant's submitted evidence failed to substantiate his objections to Pensanti's representation. The court further reasoned that appellant had offered no evidence to show he was actually innocent of the charges of which he was convicted, and thus could not establish a claim of legal malpractice. (*Wilkinson v. Zelen* (2008) 167 Cal.App.4th 37, 46; see also *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1199 ["[E]xoneration by postconviction relief is a prerequisite to recovery for legal malpractice arising out of a criminal proceeding"].)

DISCUSSION

Appellant contends the trial court's order denying his motion for a default judgment and dismissing his complaint with prejudice must be reversed because he voluntarily dismissed the complaint as provided in Code of Civil Procedure section 581 before the court issued its ruling. He asserts that he "submitted the appropriate judicial form-CIV-110" and that "[p]er the discretion of the Court Clerk, [he] was granted his voluntary dismissal on June 28th, 2017."

The record on appeal provides no support for this assertion. Appellant's notice designating the clerk's transcript on appeal refers to a "Request for Dismissal" purportedly filed on June 28, 2017, yet no such document is included in the record filed in this court. Moreover, the trial court's docket makes no reference to a request for dismissal being filed or ruled upon. Appellant also attached his purported request for a dismissal as an exhibit to his

brief, but the document was returned to him because it bore no indication that it had been filed in the trial court.

Appellant had a duty to provide an adequate record on appeal to support his claim of error. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.) In the absence of an adequate record, the judgment is presumed correct. (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) “All intendments and presumptions are made to support the judgment on matters as to which the record is silent.” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Error must be affirmatively shown. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Because the record appellant provided to this court does not demonstrate that a request for voluntary dismissal was ever filed or granted, his claim necessarily fails.

DISPOSITION

The judgment (order dismissing the complaint with prejudice) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Mark Borrell, Judge
Superior Court County of Ventura

Paul A. Bridges, in pro. per., for Defendant and Appellant.
No appearance by Defendant and Respondent.