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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MATTHEW GREY NELSON,

Respondent,

v.

YVETTE STEFENS NELSON,

Appellant.

B286017

(Los Angeles County
Super. Ct. No. BD501842)

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Laura A. Seigle, Judge.
Affirmed.

Katerina Perreault, for Respondent.

Robert Gentino, Ivy Gao for Appellant.

Appellant Yvette Stefens Nelson (wife) appeals from an order denying her motion for relief under Code of Civil Procedure section 473, subdivision (b).¹ Wife contends the court erroneously denied her motion, which sought relief from a previous order denying a claim of exemption. Respondent Matthew Gray Nelson (husband) contends the court correctly denied wife's motion for relief after concluding that relief was not warranted based upon wife's claim of mistake. We affirm because wife has failed to meet her burden on appeal to show how the court's decision to deny the motion for relief was an abuse of discretion.

FACTUAL AND PROCEDURAL BACKGROUND

Claim of exemption

Husband sought to enforce a judgment against wife, but wife claimed her bank accounts were exempt. She filed a claim of exemption on April 7, 2017, using Judicial Council form EJ-160 (Claim of Exemption). The completed form did not identify an attorney for wife. Item 5, which stated "The property is claimed to be exempt under the following code and section (specify):" was left blank. In her response to item 6, which asked for a description of facts supporting the claim, wife stated, "I'm unemployed and live fully on alimony [sic] and loans my parents when I cannot pay bills.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

My rent is now passed [*sic*] due from all my funds being taken.” Her initial filing did not include a financial statement.

Husband filed a notice of opposition on April 14, 2017, arguing the property was not exempt and specifying code sections with which he claimed wife had failed to comply. On May 12, 2017, wife filed a financial statement, stating it had been inadvertently omitted from her April 7, 2017 claim of exemption.

An attorney appeared on wife’s behalf at the hearing on June 5, 2017. The court noted that wife’s form did not specify the statutory basis for the claim of exemption, and denied on that basis. There was a discussion between the court and wife’s counsel during which wife’s counsel acknowledged the inadequacies of the original claim and asked for permission to re-file. The court denied the claim of exemption, but also stated “go ahead and re-file it and list the code and section under which the property is claimed to be exempt.”

On July 5, 2017, wife appealed the denial of her claim of exemption, but she abandoned that appeal on August 23, 2017. ² (Cal. Rules of Court, rule 8.244(b).)

² We take judicial notice of wife’s earlier appeal and notice of abandonment under Evidence Code section 452, subdivision (d), which permits judicial notice of the court records.

Section 473 motion for relief from order denying claim of exemption

Wife filed a motion for relief under section 473, subdivision (b), on July 5, 2017, seeking to set aside the order denying her claim of exemption.³ Wife sought relief based on “mistake, inadvertence, surprise, or excusable neglect, in inadvertently omitting a response to number 5 on Claim of Exemption form EJ-160.” Wife’s motion for relief offered no explanation for why she mistakenly omitted any response to item number 5 of her claim of exemption. Instead, the moving papers merely described the initial claim of exemption’s narrative response to item number 6—which permits the claimant to describe the facts supporting the claim—and explained that her late-filed financial statement “additionally demonstrated her financial support exemption.” On August 16, 2017, husband filed an opposition to wife’s motion for relief, arguing in relevant part that wife failed to make a satisfactory showing of either the basis for the exemption or the reasonableness of any mistake alleged.

Wife represented herself at the August 28, 2017 hearing on her motion for relief. At the hearing, the court explained that while mistake was one of the grounds for setting aside an order under section 473, the mistakes here—specifically not filling out the claim of exemption form

³ The motion for relief is on attorney letterhead, but is signed by wife.

properly and not attaching a financial statement—were not the types of mistakes contemplated as bases for relief under section 473. In addition, the court explained that even if it were to grant relief and consider the corrected claim of exemption, the financial statement was not credible because it showed wife’s expenses as being more than twice her income. Wife explained that she had been receiving help from her parents, and the court responded that meant she had more income and concluded the hearing by denying wife’s motion for relief.

An October 2, 2017 order after hearing and an October 11, 2017 notice of entry of order gave notice of the court’s decision. The order after hearing stated wife had “failed to [show] the existence of a satisfactory mistake as to justify relief under . . . section 473.” Wife’s claim of exemption had failed to include a financial statement and failed to identify the statutory basis for the exemption, thus failing to comply with sections 703.520 and 703.530. Neither failure constituted grounds for relief under section 473. The order further noted that wife’s untimely financial statement was not credible, and wife testified in court that she received additional monthly support from her parents that was not set forth on her financial statement.

On October 27, 2017, wife filed a notice of appeal, appealing the August 28, 2017 order denying her section 473 motion for relief.⁴

⁴ The October 27, 2017 notice of appeal only identifies the August 28, 2017 order, but we consider the notice to be a

DISCUSSION

We do not directly address the contentions raised in wife’s opening brief, because the briefing fails to pass muster in various ways. First, the brief contains no citations to the record. Second, the brief misapprehends the order on appeal, arguing that the order denying the claim of exemption is appealable and should be reversed. Because the brief remains focused on the claim of exemption and the order denying it, wife misstates the applicable standard of review and offers no legal argument about why the order on appeal—the denial of wife’s motion for relief under section 473—is in error. Third, even if we were to look past the numerous deficiencies in wife’s opening brief, we find no abuse of discretion in the lower court’s decision to deny wife’s motion for relief.

Burden to provide citations to the record

“An appellant must support his argument in the briefs by appropriate references to the record, which includes providing exact page citation. [Citations.]” (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140.) An appellant’s brief must “[s]upport any reference to a

proper and timely appeal from the October 11, 2017 notice of entry of order. (Cal. Rules of Court, rules 8.104(d) & 8.104(e).)

matter in the record by a citation to the volume and page number of the record where the matter appears.” (Cal. Rules of Court, rule 8.204(a)(1)(C).) When a party fails to provide a single citation to the record on appeal to support his or her arguments, we may properly disregard the brief and treat the unsupported issues as waived or forfeited. (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384.) “We look askance at this practice of stating what purport to be facts—and not unimportant facts—without support in the record. This is a violation of the rules . . . with the consequence that such assertions will, at a minimum, be disregarded. [Citation.]” (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846.)

Wife’s opening brief is devoid of any citations to the record and contains a mere half-page recitation of the factual and procedural history of the case, with no citations to either the clerk’s transcript or the reporter’s transcript.⁵ For that reason alone, we have authority to affirm the lower court’s order.

Burden to show error in the order being appealed

“Appealed judgments and orders are presumed correct,

⁵ Wife did not designate a reporter’s transcript as part of the record on appeal, but husband subsequently augmented the record to include the reporter’s transcripts from the hearings on June 5, 2017 and August 28, 2017.

and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)” (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935; *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 [“appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority”].) The opening brief must also state the order appealed from and why it is appealable, as well as the relief sought in the trial court. (Cal. Rules of Court, rules 8.204(a)(2)(A) & 8.204(a)(2)(B).) An appellate court may find issues forfeited for noncompliance with the rules pertaining to the form and content of appellate briefs. (*In re S.C.* (2006) 138 Cal.App.4th 396, 406–407.) ““When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” [Citation.] ‘We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.’ [Citations.]” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

The current appeal is from the August 28, 2017 order denying wife’s motion for relief under section 473. An order denying a section 473 motion for relief from the denial of a claim of exemption is an appealable order. (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1394 (*Generale Bank Nederland*) [“where the law makes express provision for a motion to vacate such as

under Code of Civil Procedure section 473, an order denying such a motion is regarded as a special order made after final judgment and is appealable [Citations.]”].)

Wife misapprehends both the order being appealed and the applicable standard of review, arguing that because the case involves application of the exemption statute to a set of undisputed facts, this court should apply a de novo standard of review and reverse the lower court’s order denying the claim of exemption. (*Ford Motor Credit Co. v. Waters* (2008) 166 Cal.App.4th Supp. 1, 7.) Wife’s argument ignores the fact that she previously appealed the court’s June 5, 2017 order denying her claim of exemption, and then abandoned her appeal on August 23, 2017 under the California Rules of Court, rule 8.244(b). When a party voluntarily abandons an appeal prior to the filing of the record on appeal and does not expressly state that the abandonment is “without prejudice,” the abandonment constitutes a dismissal that is, in effect, an affirmance of the order or judgment being appealed. (*Conservatorship of Oliver* (1961) 192 Cal.App.2d 832, 836.) The party must obtain an order setting aside the abandonment before he or she may file a second appeal from the same order or judgment. (*Ibid.*) Here, wife’s August 23, 2017 notice abandoning her earlier appeal contains no statement that the abandonment was without prejudice, and she did not obtain an order setting aside the abandonment. Accordingly, to the extent she seeks to appeal the order denying the claim of exemption, the appeal must be dismissed. (*Conservatorship of Oliver, supra*, 192

Cal.App.2d at pp. 836–837.)

Wife fails to show the court abused its discretion in denying her motion for relief

Even if we were to ignore the deficiencies of wife’s appeal and reach the substance of the order denying wife’s motion for relief, we find no abuse of discretion. The correct standard of review for the denial of motion for relief under section 473 is abuse of discretion, examining whether the trial court’s decision exceeds the bounds of reason. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 929.) “However, ‘[b]ecause the law favors disposing of cases on their merits, “any doubts in applying section 473 must be resolved in favor of the party seeking relief from default [citations]. Therefore, a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits.’” [Citation.]” (*Ibid.*)

Claims of exemption

“As a general rule, all property of a judgment debtor is subject to enforcement of a money judgment. [Citations.] The California Constitution, however, requires the Legislature to protect ‘a certain portion’ of a debtor’s property from forced sale. (Cal. Const., art. XX, § 1.5.) The purpose of this requirement is to protect enough of the debtors’ property from enforcement to enable them to support themselves and their families, and to help shift the

cost of social welfare for debtors from the community to judgment creditors. [Citations.] [¶] To that end, California has enacted a ‘comprehensive and precisely detailed scheme’ governing enforcement of money judgments. [Citations.]” (*Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86 (*Kono*).)

The process a debtor must follow to assert that his or her property is protected from an execution of judgment is set forth in section 703.520. The debtor must file a claim of exemption with the levying officer within 10 days after the judgment debtor is served with a notice of levy on the property claimed to be exempt. (§ 703.520, subd. (a).) The claim must be executed under oath, and must contain specified information, including “[a] citation of the [code section] upon which the claim is based” (§ 703.520, subd. (b)(5)), a financial statement if the property is necessary for the debtor’s support (§§ 703.520, subd. (b)(4), 703.530, subd. (a)), and a “statement of the facts necessary to support the claim.” (§ 703.520, subd. (b)(6).) The financial statement must identify all sources and amounts of earnings and other income, assets, and obligations of the judgment debtor. (§ 703.530, subd. (b).) A judge may properly deny a claim that is not supported by a financial statement. (See *Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 627 [“an unverified, very brief, balance sheet” was inadequate to meet the debtor’s burden to provide a financial statement in support of a claim of exemption].)

“The kinds and degrees of property exempt from levy are described in sections 704.010 through 704.210. These

provisions relate to property of the debtor that would ordinarily be subject to enforcement of a money judgment by execution or otherwise, but for the statute allowing the debtor to retain all or part of it to protect himself and his family. These exemptions are wholly statutory and cannot be enlarged by the courts. [Citations.] And although the burden of proof lies with the party claiming the exemption, exemption statutes are generally construed in favor of the debtor. [Citation.]” (*Kono, supra*, 196 Cal.App.4th at p. 86.) While a judgment debtor is required to claim such exemptions in the time and manner prescribed by statute, the court retains authority “pursuant to section 473 to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.” (§ 703.030, subd. (c).)

Motions under Code of Civil Procedure, section 473

As relevant here, the discretionary relief provision of section 473, subdivision (b), provides that: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”⁶ The

⁶ The same subdivision also includes a mandatory relief provision when the request is accompanied by an attorney’s sworn affidavit attesting to his or her own

moving party has ““a double burden: He must show a satisfactory excuse for his default, and he must show diligence in making the motion after discovery of the default.” [Citation.]” (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1420.)

When a party is self-represented, that fact taken alone is not a basis for relief under section 473. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1270 (*Burnete*).) “A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.’ [Citation.]” (*Ibid.*) A litigant who represents him or herself is not entitled to more leniency with respect to adherence to legal requirements. (*Id.* at p. 1267, see also *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

mistake, inadvertence, surprise, or neglect. The relevant language states, “Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s mistake, inadvertence, surprise, or neglect.” (§ 473, subd. (b).)

“Courts neither act as guardians for incompetent parties nor for those who are grossly careless of their own affairs. . . . The only occasion for the application of section 473 is where a party is unexpectedly placed in a situation to his injury without fault or negligence of his own and against which ordinary prudence could not have guarded. Neither inadvertence nor neglect will warrant judicial relief unless it may be reasonably classified as of the excusable variety upon a sufficient showing. [Citation.]” (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513.) To determine whether a party’s mistake or neglect is excusable, a court inquires whether a “*reasonably prudent* person under the same or similar circumstances’ might have made the same error. [Citation.]” (*Generale Bank Nederland, supra*, 61 Cal.App.4th at p. 1399.)

Here, we find no abuse of discretion in the court’s denial of wife’s motion for relief based on its finding that her failure to identify the statutory basis for her claim of exemption was not an excusable mistake or neglect of the type that section 473 was intended to redress. Wife provided no explanation for her failure to follow the directions on the claim of exemption form, and without any additional detail, it was well within the bounds of reason for a court to conclude that a person of reasonable prudence would not make such a mistake. (*Generale Bank Nederland, supra*, 61 Cal.App.4th at p. 1399.) Even if the wife’s failure to identify a statutory basis for her claim of exemption is characterized as a mistake of law, no relief under section 473 is warranted

as “‘ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief. [Citations.]’” (*Anderson v. Sherman* (1981) 125 Cal.App.3d 228, 238.) The court did not abuse its discretion in denying wife’s motion for relief.

DISPOSITION

The order denying appellant Yvette Nelson’s motion under section 473, subdivision (b), is affirmed. Respondent Matthew Grey Nelson is awarded his costs on appeal.

MOOR, Acting P.J.

We concur:

KIM, J.

JASKOL, J.*

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