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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GENESIS MEDIA, LLC, Plaintiff; HOWARD MISLE and ROBERT G. KLEIN, Appellants, v. OWNZONES MEDIA NETWORK, INC., et al., Defendants and Respondents.	B294620 Los Angeles County Super. Ct. No. BC706021

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Law Office of Robert G. Klein and Robert G. Klein for Appellants Howard Misle and Robert G. Klein.

Greenspoon Marder, Rebecca Lawlor Calkins and James H. Turken for Defendants and Respondents.

INTRODUCTION

Appellants Howard Misle and his attorney Robert G. Klein (collectively, appellants) appeal from a sanctions order entered against them for unilaterally terminating a deposition. Because appellants have presented an incomplete appellate record, we cannot determine whether the court's order was an abuse of discretion. We therefore affirm.

BACKGROUND

Based on what we can glean from the limited record before us, it appears Misle is the founder of plaintiff Genesis Media, LLC (Genesis),[1] which filed a breach of contract action against defendants and respondents Ownzones Media Network, Inc., and Dan Goman (collectively, Ownzones). It seems Genesis hired Ownzones to produce and operate a cannabis-focused media and lifestyle business called "420TV."

As part of the discovery process, Ownzones noticed Misle's deposition for September 21, 2018, in Las Vegas, Nevada, where Misle lives, at the law offices of Greenspoon Marder. The day of the deposition, an armed security guard was stationed in the firm's lobby. Appellants passed (and immediately noticed) the guard on their way to the conference room, where Ownzones's attorney Rebecca Lawlor Calkins was waiting.

The deposition was videotaped. At 10:02 a.m., before going on the record, the videographer explained: "All present in the room … will now state their appearance and affiliation for the record. If there are any objections to proceeding, please state

[1] Genesis is not a party to this appeal.

them at the time of your appearance … .” Appellants stated their appearances. They did not object to the guard’s presence.

After the court reporter administered the oath to Misle, but before Calkins could finish asking her first question, Misle demanded to know why an armed guard was standing in the lobby. Calkins emphasized that the guard was not inside the conference room, but did not respond directly to the question. As Misle continued to demand an answer, Klein jumped in: “We have the right to terminate [the deposition] and seek a protective order.” Although Klein had asked Misle to wait while he tried to resolve the issue with Calkins, Misle stood up and left.

As Klein went after Misle, who had already taken the elevator downstairs, he agreed to give Calkins a status update in a few minutes. The videographer stopped recording at 10:07 a.m. About an hour later, after Klein did not either return to the room or respond to Calkins’s request for an update, Calkins suspended the deposition for the day. Klein ultimately emailed Calkins at 12:47 p.m.: “We terminated the deposition because you refused to have the armed guard removed.”

Ownzones tried and failed to reschedule Misle’s deposition, then filed a motion to compel and request for sanctions.[2] In opposition, Klein claimed he suspended the deposition to move for a protective order. A motion for a protective order was never filed.

After a contested hearing that was not transcribed, the court reviewed the deposition video and issued a written order granting the motion to compel and imposing sanctions against

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[2] To the extent appellants argue that the meet and confer letter was inadequate, they have not developed the argument, and we do not address it. (See *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.)

Misle, Genesis, and Klein, jointly and severally, in the reduced amount of $11,000. The court found that the video confirmed Calkins's account of events. The court also noted that Genesis "did not bring a motion for protective order regarding the conditions of the deposition, including whether an armed guard can be present outside the deposition room."

Appellants filed a timely notice of appeal and elected to proceed with only a clerk's transcript. (Code Civ. Proc., § 904.1, subd. (a)(12).) Notably, they did not designate, and the clerk's transcript does not contain, the deposition video. (See Cal. Rules of Court,[3] rule 8.224(b)(2).)

DISCUSSION

" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Appellants not only bear the burden of proof on appeal but also bear the burden of assuring the appellate record is sufficient to resolve the issues they raise. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.) Here, appellants contend the court abused its discretion in imposing sanctions. But the hearing in this case was not reported, and appellants have not submitted a substitute for the missing transcript, such as a settled or agreed statement. (See rules 8.134 & 8.137.) Perhaps more importantly,

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[3] All undesignated rule references are to the California Rules of Court.

appellants have also failed to provide this court with the deposition video on which the court below relied. (See rule 8.224 [transmission of exhibits to court of appeal].) "Where exhibits are missing we will not presume they would undermine the judgment." (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291.)[4]

In short, "[w]ithout the proper record, we cannot evaluate issues requiring a factual analysis." (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003.) Therefore, where, as in this case, a party fails to furnish an adequate record of the challenged proceedings, his appellate claims must be resolved against him. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295–1296.) As appellants have not provided a sufficient record in this case, we conclude they have not proven that the court abused its discretion in imposing sanctions against them.

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[4] On August 14, 2019, the day after oral argument, appellants filed a motion to augment the record with the deposition video. Because the motion was untimely, we denied it. (See *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn. 1.)

DISPOSITION

The order is affirmed. Respondents Ownzones Media Network, Inc., and Dan Goman shall recover their costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.