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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AMR ELSAMNY,

Plaintiff and Appellant,

v.

KURT TANDOC,

Defendant and Respondent.

B278688

(Los Angeles County
Super. Ct. No. BC580853)

APPEAL from an order of the Superior Court of Los Angeles County, Patricia Nieto, Judge. Affirmed.

Amr Elsamny, in pro. per., for Plaintiff and Appellant.

Raffalow, Bretoi & Adams, Perry M. Forrester and Leesa A. Freed, for Defendant and Respondent.

Amir Elsamny, a resident of Illinois, sued Kurt Tandoc for personal injury in 2015. In 2016, Tandoc filed a motion to compel discovery, which the court granted. When Elsamny failed to comply with the court's order, Tandoc moved for terminating sanctions. The trial court granted the motion, and dismissed the case; Elsamny appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Amir Elsamny alleged in his complaint that on May 10, 2013, he was involved in a motor vehicle accident with defendant Kurt Tandoc. His complaint, filed in May 2015, alleged two causes of action: negligence and negligence per se. Tandoc filed a general denial in November of that year.

Along with the denial, Tandoc served discovery requests, to which Elsamny failed to respond. As a result, Tandoc filed motions to compel discovery, and sought monetary sanctions. Elsamny did not file written opposition to the motions but did appear telephonically for the hearing on July 20, 2016. The court granted the relief requested, ordering Elsamny to provide verified responses without objections within 10 days, and to pay sanctions of \$780 within 30 days. Elsamny did not comply.

In August, Tandoc moved for terminating sanctions, along with further monetary sanctions. Elsamny filed no opposition, but appeared telephonically at the hearing. The court ordered the matter dismissed as a terminating sanction, and denied the request for further monetary sanctions. The record before this court does not contain a transcript or other record of those proceedings.

DISCUSSION

A trial court has broad discretion with respect to discovery sanctions, which includes the authority to impose terminating sanctions where other sanctions have proved inadequate. We review the trial court's determination to do so for abuse of discretion. (*Parker v. Wolters Kluwer U.S., Inc.* (2007) 149 Cal.App.4th 285, 297 [terminating sanction not an abuse of discretion where party failed to provide discovery and failed to comply with court's discovery orders or to pay sanctions ordered]; *In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1309 [court has discretion to strike pleadings for misuse of the discovery process, including failure to respond to discovery and disobedience of court order of discovery].) "An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] The abuse of discretion standard affords considerable deference to the trial court, provided that the court acted in accordance with the governing rules of law. "The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown. [Citation.]" [Citations.]" [Citation.] A decision 'that transgresses the confines of the applicable principles of law is outside the scope of discretion' and is an abuse of discretion. [Citation.]" (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.)

Elsamny argues on appeal that he did not comply with the discovery orders because he was away on business and did not receive notice of the discovery requests. Because he did not file written opposition to the motion for terminating sanctions, there is no record, aside from the assertions in his briefing, that he raised this issue at the trial court. On appeal, it is the burden of appellant to demonstrate error and to provide an adequate record for review. (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935. [Failure to provide transcript or settled statement prevents review on appeal].)

The failure to raise an issue in the trial court ordinarily bars an appellant from raising that issue on appeal. While an appellate court may consider a new issue when the facts are undisputed, and the issue requires only the application of the law to those facts (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1316-1317), that is not the case here. The absence of a written response, coupled with the absence of any record of the hearing, precludes any determination that the assertions Elsamny now makes are undisputed; indeed, on this record, we must conclude that Tandoc had no opportunity to dispute them at the trial court.

An appealed judgment is presumed correct; Elsamny's failure to demonstrate error requires affirmance. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

DISPOSITION

The judgment is affirmed. Tandoc is to recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.*

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