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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DALIA NOSRATI,

Plaintiff, Cross-defendant
and Appellant,

v.

FARHAD RASHTI, et al.,

Defendants, Cross-
complainants and Respondents.

B276068

(Los Angeles County
Super. Ct. No. BC452244)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth R. Feffer, Judge. Affirmed.

Brifman Law Corporation and Mark Brifman for Plaintiff, Cross-defendant and Appellant.

Caldwell Law Group and Susan L. Caldwell for Defendants, Cross-complainants and Respondents.

* * * * *

Plaintiff, cross-defendant and appellant Dalia Nosrati appeals from a judgment entered in favor of defendants, cross-complainants and respondents Farhad Rashti and Mahnaz Rashti (the Rashtis) following a court trial on the Rashtis' first amended cross-complaint. Nosrati contends the trial court erred in finding her liable for defamation and intentional infliction of emotional distress (IIED) based on an agency relationship for the wrongdoings of her former husband, David Cohen. Because Nosrati's opening brief fails to set forth a summary of the material facts under the substantial evidence standard of review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2009, Nosrati, along with Cohen and her children, moved into a residential property owned by the Rashtis located on Spaulding Drive in Beverly Hills, California (the Property). Thereafter, a dispute arose between Nosrati and the Rashtis involving the sale of the Property, the details of which are not pertinent to this appeal. The parties were unable to resolve the dispute, and in January 2011, Nosrati filed suit against the Rashtis for breach of contract, fraud, and other claims involving the Property. It is Nosrati's conduct towards the Rashtis following the lawsuit that is the focus of this appeal.

While the lawsuit was pending, Mahnaz Rashti¹ testified that Nosrati told members of the Rashtis' synagogue that they had "robbed" her family of the Property, even though Nosrati never owned title to the Property. Moreover, on at least five or six occasions Mahnaz was confronted by people in her community

¹ Hereinafter, we refer to respondents by their first names in order to avoid any confusion because they share the same last name.

stating they heard from Nosrati that the Rashtis had “taken” the Property. A rabbi also showed up unannounced at the Rashtis’ home requesting that they give the Property to Nosrati because Nosrati said she paid for it.

Mahnaz, a dentist, also received a flier at her office with her picture on it that stated “thief,” “convicted criminal,” and contained other untrue statements. The flier was also left at the Rashtis’ front door and other places in their neighborhood. Mahnaz believed the flier was prepared by Nosrati because it appeared around the same time Nosrati had been evicted from the Property. After receiving the flier, Mahnaz was told by several people that they did not want to deal with a thief. She was also told by other dentists that they no longer wanted to work with her because of what she had done to Nosrati.

Nosrati also filed lawsuits against members of the Rashtis family over the Property, including Mahnaz’s brother, niece, and brother-in-law, despite the fact that none of these individuals had an ownership interest in the Property. In addition, Nosrati filed a lis pendens against the Property, which delayed the sale of the Property to another buyer.

Nosrati admitted to speaking with the rabbi about the Property, but denied making any “personal attacks” about the Rashtis. She also denied being involved in the preparation and distribution of the flier.

As a result of Nosrati’s conduct, Mahnaz testified that her reputation in the community was “badly” harmed. The Rashtis also suffered from stress, anxiety, anger, fear, embarrassment, and humiliation. Thus, in August 2011, the Rashtis filed a cross-complaint, later amended in November of 2012, against Nosrati

and Cohen² alleging causes of action for defamation, IIED, stalking, civil assault, and other claims related to the Property.

Following a court trial, judgment was entered in favor of the Rashtis and against Nosrati.³ In its statement of decision, the court ruled the Rashtis did not “steal” the Property from Nosrati; rather, Nosrati was renting the Property from the Rashtis. On the defamation claim, it ruled Nosrati had “spread false and defamatory information, accusing [the Rashtis] of unethical and illegal behavior, to [their] business associates and members of [their] religious community.” The court further ruled the flier was false and defamatory and written by or with the knowledge and consent of both Nosrati and Cohen. According to the trial court, Nosrati and Cohen “acted in concert with each other.” On the IIED claim, the court ruled Nosrati’s “outrageous” conduct consisted of “dump[ing]” the flier on the doorstep of the Rashtis’ home and the home of others, and “persuading a noted rabbi to make a personal appeal to the [Rashtis] at their home.” The court further held the Rashtis suffered from embarrassment, anxiety, oppression, and fear.

Nosrati filed a timely notice of appeal.

DISCUSSION

Nosrati contends the judgment entered against her on the defamation and IIED claims must be reversed because those claims are not supported by substantial evidence. Nosrati argues her liability is based solely on the acts of Cohen, and there is no

² Cohen is not a party to this appeal; therefore, we need not recite facts related to Cohen’s conduct towards the Rashtis in this opinion.

³ Nosrati challenges only the Rashtis’ causes of action for defamation and IIED.

evidence to support the trial court’s finding that Cohen was her agent.

A. Applicable Legal Principles

“In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court’s findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings.” (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).)

“ ‘A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*. [Citation.]’ [Citation.] Where a party presents only facts and inferences favorable to his or her position, ‘the contention that the findings are not supported by substantial evidence may be deemed waived.’ ” (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738; see *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887 (*Fink*) [Appellant “cites only evidence favorable to his position, ignoring all to the contrary. Such briefing is manifestly deficient.”]; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218 [a “party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable”].)

B. Nosrati Waived Any Claim of Error by Failing to Set Forth Material Facts in Her Opening Brief

The fundamental flaw with Nosrati's appeal is that her opening brief is based on a "highly selective" recitation of the evidence, referencing only facts favorable to her position, and omitting citations to the conflicting evidence submitted by the Rashtis. (*Fink, supra*, 25 Cal.3d at p. 887.) "Such briefing is manifestly deficient." (*Ibid.*) Nosrati ignores the trial court's findings that Nosrati herself was involved in defamatory and outrageous conduct towards the Rashtis. Nowhere in her opening brief is there any mention that Nosrati told members of the Rashtis' synagogue that the Rashtis had "robbed" the Property from her family, or that a rabbi showed up unannounced at the Rashtis' home requesting that they give the Property to Nosrati because she had told the rabbi she paid for it. Nosrati's statements were not only false, but she accused the Rashtis of illegal conduct. All of these findings factored into the trial court's analysis but were left out of Nosrati's opening brief. Because Nosrati failed to summarize the material evidence as required under the substantial evidence standard of review, we conclude Nosrati waived her claim of error.

C. We Alternatively Hold the Trial Court's Findings Were Supported by Substantial Evidence

Assuming *arguendo* that the issue had been preserved on appeal, we hold substantial evidence supported the judgment against Nosrati for defamation and IIED.

Defamation is " 'the intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage.' " (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 27.) False statements that accuse an

individual of criminal conduct are defamatory on their face. (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1135.) In order to prove an IIED claim, “ ‘[l]iability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’ ” (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 496.) Mere insults, indignities, threats, annoyances, or petty oppressions are not sufficient. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.) Further, the plaintiff must prove that the emotional distress was severe and not trivial or transient. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1376.)

Here, Nosrati’s statements about the Rashtis were not merely insults, indignities, or threats; rather, she falsely accused them of criminal conduct—i.e., stealing the Property from Nosrati’s family despite the fact she was merely a renter. Her statements, along with her continuing campaign of professional and personal disparagement against the Rashtis, were defamatory on their face, and also constituted “outrageous” conduct intended to inflict severe emotional stress. Nosrati’s statements damaged the reputation of both Mahnaz and Farhad Rashti, causing them to suffer from embarrassment, anxiety, oppression, and fear. (*Thompson, supra*, 6 Cal.App.5th at p. 981 [“single witness’s testimony may constitute substantial evidence to support a finding”].)

Accordingly, we conclude substantial evidence supported the trial court’s determination.⁴

⁴ Given our ruling, and considering the trial court’s judgment against Nosrati for defamation and IIED was based on Nosrati’s own conduct, it is unnecessary for us to address whether Nosrati

DISPOSITION

The judgment is affirmed. The Rashtis shall be entitled to their costs on appeal.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

is also liable for the wrongdoings of Cohen based on an agency relationship.

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