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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RONALD D. BROWN, as Trustee, etc., et al., Plaintiffs and Respondents, v. JOSE DOUGLAS FALLAS, Defendant and Appellant.	B263226 (Los Angeles County Super. Ct. No. KC066122)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan Oki, Judge. Modified and, as modified, affirmed.

Sandra J. Applebaum for Defendant and Appellant.

Cripe & Graham, Gary E. Cripe and Ai Woodward for Plaintiffs and Respondents.

Plaintiffs and respondents Ronald and Kathleen Brown[1] sued their next-door neighbor, defendant and appellant Jose Douglas Fallas. After Fallas's attorney was relieved and after Fallas's motion to continue trial was denied, the matter proceeded to a court trial, at which Fallas voluntarily absented himself. The court found in the Browns' favor and awarded damages. Fallas appeals. We modify the judgment to correct an error and affirm as modified.

BACKGROUND[2]

The Browns lived at 780 S. Walnut in San Dimas. Fallas was their next-door neighbor. Disputes over, for example, an easement Fallas claimed over the Browns' property culminated in a lawsuit by the Browns against Fallas, individually and as trustee of a trust, for trespass, interference with prospective business advantage, slander of title, quiet title, and injunctive relief. Fallas cross-complained against the Browns to establish a prescriptive easement, but that cross-complaint was summarily adjudicated against him.

One month before the January 13, 2015 trial was to begin, the trial court granted Fallas's counsel's motion to be relieved as counsel.[3] On the day of trial, Fallas personally appeared and

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1 We refer to plaintiffs by their first names to avoid confusion.

2 The background is primarily from a settled statement.

3 The Werner Law Firm's motion cited a breakdown in the attorney-client relationship and Fallas's breach of the retainer agreement by failing to pay outstanding bills as grounds for the motion. Despite multiple attempts to contact Fallas, counsel had not heard from him in two months. The motion stated that the

orally moved to continue trial because he'd hired an attorney, Albert Perez. A substitution of attorney, however, had not been filed, and Fallas had no documentation evidencing his retention of Perez, and neither the court nor opposing counsel had received a communication asking that trial be continued. The court denied the motion to continue trial. In addition, because Fallas had failed to appear at the final status conference and to submit exhibit and witness lists, the court precluded him from introducing exhibits and calling witnesses.

Trial then began with Ronald's testimony, during which Fallas left. He did not return.[4] Ronald testified, for example, that Fallas tapped into the Browns' sewer line without permission or permits; erected a shed that encroached on the Browns' property; trespassed onto the Browns' property; and harassed the Browns by dumping trash and debris on their property and shining lights into their home. Ronald testified about the effect this had on the Browns' emotional state and health and on their attempt to sell the property, which included a cancellation of escrow. The Browns also lost an opportunity to buy property in Utah, where they intended to move after selling

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next hearing was on December 9, 2014 (motion for summary judgment), and trial was set for January 13, 2015.

[4] During Ronald's testimony, Fallas made "several attempts to interrupt which were not objections to the testimony or evidence. At approximately 10:10 a.m., Mr. Fallas uttered a stream of offensive statements directed to the Court proceeding and, apparently, the Court, and Plaintiffs' attorneys, and walked out of the trial. The Court stated for the record that Mr. Fallas was leaving the court voluntarily. Mr. Fallas exited, and the trial continued."

their San Dimas home. They wanted to move to Utah to benefit Kathleen's health (she'd been diagnosed with "COPD") and to reduce their living expenses.

Catherine Cripe, a real estate broker and attorney, testified as a percipient and expert witness. She listed the Browns' property for sale. Fallas interfered with the sale by appearing at the open house smelling of alcohol and making "vulgar, offensive and hostile remarks" to Cripe. Fallas also claimed an easement to use the Browns' driveway, and Cripe received a letter from Donna Duncan, a real estate escrow officer, asserting that claim. Duncan demanded that the property be removed from the active listing status and that an escrow be cancelled. Plaintiffs, however, entered into escrow, but it was cancelled "because the existence of the alleged prescriptive easement had not been resolved."

In lieu of Catherine Grave's live testimony, the court accepted her declaration, which stated her professional opinion, as a chartered financial analyst, that the " 'total opportunity cost, or loss of use of funds' from the lost sale 'through the date of trial of January 13, 2015 is $16,742.00.' "

The trial court awarded $563,309.22 in damages as follows: $25,000 for trespass, based on Fallas's written admissions that he connected to the Browns' sewer line and on Ronald's testimony; $11,500 for trespass by encroachment (a shed), based on Ronald's testimony that the cost of renting a similarly sized storage unit would be $209 per month and that the shed had been encroaching for 55.5 months; $199,160 on the cause of action for interference with prospective business advantage, based on Ronald's, Cripe's and Graves's testimony; $30,000 in emotional distress damages based on Ronald's testimony; and $262,399.22 for slander of title

as reasonable attorney fees and costs plus $5,250 for the value of plaintiffs' "personal time which had to be devoted to clearing the title to their property." Plaintiffs were allowed to submit a supplemental brief and evidence regarding punitive damages. The court awarded $30,000 in punitive damages against Fallas.

Judgment was entered on February 10, 2015 in the amount of $564,029.22.

Fallas appeals, contending **I.** there is insufficient evidence to support the judgment, **II.** the trial court abused its discretion in relieving his counsel, and **III.** the court abused its discretion by denying his motion to continue trial.

DISCUSSION

I. The settled statement and Fallas's substantial evidence contentions

Fallas contends there is insufficient evidence to support (1) the $262,399.22 awarded as reasonable attorney fees and costs for the slander of title cause of action; (2) the $5,250 awarded "for the value of [the Browns'] personal time which had to be devoted to clearing the title to their property"; (3) the $30,000 awarded for emotional distress; and (4) the finding in the Browns' favor on the interference with prospective economic advantage cause of action. We find that Fallas forfeited these contentions.

The substantial evidence standard of review requires us to examine the evidence as a whole, including evidence which does not support the appellants' version of events: " ' "When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will

support the finding of fact." ' [Citations.] ' "[W]e have no power to judge . . . the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." ' [Citations.] Our role is limited to determining whether the evidence before the trier of fact supports its findings." (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766.)

Our substantial evidence review here is based on a clerk's transcript and a settled statement prepared by *plaintiffs*.[5] "The purpose of a settled statement is to provide the appellate court with an adequate record from which to determine contentions of error." (*In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1580.) An appellant wanting to proceed via a settled statement must make a motion in the trial court and, if the motion is granted, the appellant prepares a "condensed narrative of the oral proceedings that the appellant believes necessary for the appeal." (Cal. Rules of Court, rule 8.137(b)(1).) "If the condensed narrative describes less than all the testimony, the appellant must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise." (*Id.*, (b)(2).) "Stating the points to be raised on appeal enables the respondent to determine whether additional portions of the oral proceedings should be included in the settled statement. [Citation.] Failure to include issues in the settled statement precludes the appellant from raising them on appeal. [Citation.]" (*Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524, 534.)

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[5] There was no court reporter at trial.

Here, Fallas moved to use a settled statement for the purposes of appealing the judgment. Although his motion did refer to his request to continue trial and that his counsel had been relieved and to the "doubling of damages," Fallas's motion did not clearly identify issues he intended to raise on appeal. Over plaintiffs' objection that a settled statement was improper given Fallas's absence from trial, the trial court ordered plaintiffs to prepare a settled statement. Plaintiffs prepared a proposed settled statement to which Fallas did not object or otherwise move to clarify or supplement. Now, however, he claims that the settled statement contains insufficient evidence to support various damages and findings. If plaintiffs had notice Fallas intended to contest the sufficiency of the evidence to support, for example, the slander of title damages, then they could have supplemented the settled statement. Having not given such notice to plaintiffs, it is manifestly unfair for Fallas to benefit from any deficiencies in the settled statement. His insufficiency of the evidence contentions are therefore forfeited.

Even if they were not forfeited, we would reject them. As to the $262,399.22 awarded on the slander of title cause of action, Fallas fails to explain why the evidence detailed in the settled statement—namely, counsel's invoices—is insufficient to support the damages. The issue is therefore forfeited for that reason as well. (See generally *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [appellants must support contentions with reasoned argument and citations to authority and to the record; otherwise, contentions are forfeited]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 [points perfunctorily raised on appeal, without adequate analysis and authority, may

be treated as abandoned]; Cal. Rules of Court, rule 8.204(a)(1)(B) & (C).) Fallas does, however, challenge specific billing entries. We have reviewed them and discern no error. (See generally *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030 ["attorney fees and litigation costs are recoverable as pecuniary damages in slander of title causes of action" when "litigation is necessary 'to remove the doubt cast' upon the vendibility or value of a plaintiff's property"].)

Second, Fallas complains that "no testimony [was] submitted" to substantiate the trial court's award of $5,250 for the value of the Browns' personal time devoted to clearing title to the property. How does Fallas know that no testimony was submitted on that issue? He voluntarily absented himself from trial. In any event, the record shows that the trial court did evaluate evidence. Before trial, the Browns submitted a summary of damages which valued their time at 100 hours times $75/hour for a total of $7,500. The court's award of almost $2,000 less than that suggests the court evaluated evidence.

Third, the noneconomic damages award of $30,000 was based on the "testimony of Ronald Brown as to his and his wife's having to endure the trespasses and harassments by Mr. Fallas, the lost sale of their property as well as the concerns for Mrs. Brown's health, specifically her COPD, . . . which they had sought to mitigate by selling their home in the inhospitable air quality of San Dimas and moving to clearer air in Utah." Cripe also testified that Fallas came to the Browns' open house, smelling of alcohol and directing vulgar, offensive and hostile remarks to Cripe. He threw trash and debris on the Browns' property and shone lights into their home. This evidence was sufficient to

support the noneconomic damages. (See generally *Janice H. v. 696 North Robertson, LLC* (2016) 1 Cal.App.5th 586, 602-603.)

Finally, Fallas argues there was insufficient evidence he knew plaintiffs had an economic relationship with a third party. (See generally *Youst v. Longo* (1987) 43 Cal.3d 64, 71 & fn. 6 [stating elements of cause of action for interference with prospective economic advantage].) But Ronald testified about "Fallas'[s] interference with the attempt to sell Plaintiffs' property by, *inter alia*, Mr. Fallas'[s] assertion of a prescriptive easement over a portion of Plaintiff[s'] property; the cancelling of escrow and the loss of a sale of Plaintiffs' property . . . ." Catherine Cripe testified that Fallas said he would interfere with any sale of plaintiffs' property. She received a letter from Fallas's representative asserting a prescriptive easement and "requiring the removal of the property from the active listing status; and the cancellation of an escrow due to the unresolved alleged prescriptive easement." Based on this evidence and to the extent we can imply findings from it, we reject Fallas's claim of insufficient evidence.

II. The motion to be relieved as counsel

One month before trial, the trial court granted Fallas's counsel's motion to withdraw as counsel. Fallas now contends that the court abused its discretion by granting it.[6] We disagree.

Fallas's contention rests on an assertion that the record doesn't show he was served with (1) the motion, and (2) the order granting it because there are no proofs of service in the record.

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[6] Plaintiffs argue that Fallas forfeited the issue by failing to provide the motion as part of the record on appeal. This argument might have been well taken had plaintiffs not done Fallas the favor of augmenting the record with the motion.

As to the motion, the record *does* show it was served on him. Counsel, in support of the motion, declared that Fallas was personally served with the motion. Also, the December 9, 2014 order granting the motion found that Fallas had been personally served. Counsel also represented that he'd made multiple attempts, by phone and by letter, to contact Fallas. The last attempt, a letter dated October 17, 2014, told Fallas that if he didn't respond, counsel would, in seven days, move to be relieved as counsel. Moreover, we obtained the superior court file.[7] It contains a proof of service showing that the motion, after several attempts, was "drop-served" on November 7, 2014 on a man matching Fallas's physical description but who refused to give his name. We therefore reject Fallas's contention he wasn't served with the motion.

As to his related contention that he wasn't served with the December 9, 2014 order relieving counsel, such an order "must be served on the client" and the court "may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court." (Cal. Rules of Court, rule 3.1362(e).) Citing this rule and *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276 (*Gamet*), Fallas argues that the order and subsequent proceedings, including the judgment, were void. In *Gamet*, counsel for plaintiffs Sue Gamet and ASI (a corporation) was relieved but the order relieving counsel wasn't served on ASI. (*Id.* at pp. 1285-1286.) The corporation thus received no notice of subsequent proceedings, and judgment was entered against it. Noting that the

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[7] We take judicial notice of the superior court file. (Evid. Code, §§ 452, 459 [judicial notice by reviewing court].)

"fundamentals of due process include notice and opportunity to be heard" and that ASI did not receive "adequate notices," *Gamet* concluded that the judgment against ASI was void. (*Id.* at p. 1286.)

Gamet is unpersuasive. First, *Gamet*'s discussion about the judgment against ASI appears to be dicta, because ASI's appeal was dismissed as untimely. (*Gamet*, *supra*, 91 Cal.App.4th at p. 1279.) Second, any failure here to serve the December 9, 2014 order did not render the subsequent judgment against Fallas void. Rather, a court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties, or when it lacks any power to hear or determine the case. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) If a court lacks fundamental jurisdiction, its ruling is void. (See generally *People v. Lara* (2010) 48 Cal.4th 216, 225.) Most procedural errors, however, are not jurisdictional. (See, e.g., *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 53, 56.) Justice Bedsworth made this point in dissent in *Gamet*. He disagreed that the judgment against ASI was void, and he noted that ASI had actual notice of the order: "There is no denying that the withdrawal order did not become operative by its terms, never having been served as required. The question I think this presents is whether we should focus on formal defects even when the substance is there. And I think the answer should be 'no.' " (*Gamet*, at p. 1289 (dis. opn. of Bedsworth, J.).) Because there was evidence that the parties in *Gamet* had actual notice of the proceedings, Justice Bedsworth would have affirmed the judgment.

The record here similarly shows that Fallas had actual notice of the proceedings—namely, the final status conference

and trial—and an opportunity to be heard. True, the motion to be relieved as counsel did not inform Fallas of the date of the final status conference (January 5, 2015). But the record shows he was otherwise given notice of that hearing date. His counsel advised him in a letter dated October 1, 2014 that trial was scheduled for January 2015 and that they needed to prepare for trial and "retain an expert witness." Plaintiffs' counsel also advised Fallas, via a letter dated December 10, 2014, of his obligation to exchange exhibit and witness lists, jury instructions, and a proposed statement of the case.[8] Fallas was served with plaintiffs' proposed jury instructions and witness list on December 31, 2014.[9] The face of those documents states a date of January 5, 2015 at 8:30 a.m. in Department J. Fallas therefore had notice that there was a hearing on that date.

Yet, he failed to appear at the final status conference. The trial court therefore set an order to show cause re sanctions against Fallas. Plaintiffs served a notice of that ruling by mail on January 5, 2015. The notice of ruling informed Fallas that a final status conference had been held on January 5, 2015, and plaintiffs had appeared and announced ready for the January 13 trial. "The Court ruled that it would issue an OSC re: Sanctions against the Defendant for failure to appear at the Final Status Conference." The record thus shows that Fallas had notice of the final status conference, of the OSC re sanctions, and of the trial date.

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[8] This is according to the settled statement, to which, as we have noted, Fallas did not object.

[9] These documents are in the superior court file.

Fallas personally appeared for trial. And he clearly knew his counsel had been relieved, because he'd hired a new attorney, Perez. The record also contains a reference to a check dated November 7, 2014 to retain Perez. This suggests that Fallas had already obtained new counsel *before* his old counsel was relieved on December 9 and at least two months before the January 13 trial date.

We are similarly unpersuaded by Fallas's argument about prejudice. He suggests prejudice somehow arose because the motion to be relieved was heard the same day as plaintiffs' motion for summary judgment. Although Fallas's argument is unclear, to the extent he contends he was unrepresented at the summary judgment hearing, the order granting summary adjudication states that Fallas was represented. To the extent he complains his attorney filed the opposition one day late and with typographical errors, the court considered the opposition, notwithstanding these problems. To the extent Fallas contends his counsel committed malpractice by making concessions in the opposition that resulted in the motion being resolved adversely to him, that is not before us.

Next, Fallas argues he was prejudiced because an evidentiary sanction was issued against him; namely, based on his failure to submit witness and exhibit lists, he was precluded at trial from introducing witnesses and exhibits. Trial courts have broad discretion in determining the admissibility of evidence. (*People v. Williams* (1997) 16 Cal.4th 153, 196; *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 36, superseded by statute on another ground in *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573.) This broad discretion includes whether to issue evidentiary

sanctions. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; see also Code Civ. Proc., § 2023.030, subd. (c).)

The record here does not reveal an abuse of discretion. Fallas's argument rests on a claim he did not know about his pretrial obligations. This claim, as we have said, is not borne out by the record. Indeed, the record suggests that Fallas evaded service and ignored his pretrial obligations. But, even assuming there was an error in issuing an evidentiary sanction, Fallas was not precluded from cross-examining witnesses. He instead chose to absent himself from trial. Finally, the settled statement does not show what, if any, response Fallas made to plaintiffs' request for the evidentiary sanction. It being appellant's burden to establish error, we reject Fallas's contention. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

III. Motion for a continuance

On the day of trial, the trial court denied Fallas's request for a continuance. Fallas contends the court abused its discretion. We disagree.

Trial dates are regarded as "firm." (Cal. Rules of Court, rule 3.1332(a).) Grounds to continue a trial date include "unavailability of trial counsel because of death, illness, or other excusable circumstances." (*Id.*, (c)(3).) In ruling on a continuance motion, the trial court must consider all relevant facts and circumstances, including the proximity of the trial date; prior continuances or delays; length of the continuance requested; availability of alternative means to address the problem giving rise to the request for a continuance; prejudice that parties or witnesses will suffer as a result of the continuance; the court's calendar and the impact of granting a continuance on other pending trials; and whether the interests of justice are best

served by a continuance, by trial or by imposing conditions on the continuance. (*Id*., (d).) We review a decision denying a continuance for an abuse of discretion. (*Link v. Cater* (1998) 60 Cal.App.4th 1315, 1321.)

Fallas suggests that the trial court should have made inquiries about the grounds for continuance. But it was *his* burden to make a showing why a continuance was warranted. On this record, he failed to make that showing. There is no explanation why the motion was made on the day of trial and not sooner. Rather, the only ground Fallas offered for the continuance was his new attorney, Perez, told Fallas to ask for one. The record does not otherwise explain why Perez was not present. (Compare *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389 [counsel made showing why he was unavailable for trial].) Moreover, Perez's status was unclear because no substitution of attorney had been filed and neither the court nor plaintiffs' counsel had communicated with Perez. Therefore, the "Court stated that based upon all of the circumstances, and the failure of Mr. Fallas to demonstrate good cause for a continuance of the trial," the "trial would proceed as scheduled." On this record, we too fail to discern good cause for a continuance.

IV. Modification of the judgment

The judgment was entered against Fallas, individually and as trustee of the Jose Douglas Fallas Trust. Fallas, in his capacity as trustee, however, was dismissed without prejudice in 2013. The judgment therefore must be modified.[10]

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[10] Plaintiffs concede the issue.

DISPOSITION

The judgment is modified to reflect that the judgment is only against Jose Fallas individually. The judgment is affirmed as modified. All parties are to bear their own costs on appeal. Respondents' objections to and motion to strike matters from the reply brief is denied. Any requests for judicial notice contained in the reply brief are denied.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.