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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TIMOTHY CRAYTON,

Plaintiff and Appellant,

v.

JOHN A. CLARKE et al.,

Defendants and Respondents.

B268734

(Los Angeles County
Super. Ct. No. BS152050)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Timothy Crayton, in pro. per., for Plaintiff and Appellant.

Cummings, McClorey, Davis, Acho & Associates and Sarah L. Overton for Defendants and Respondents.

Plaintiff, Timothy Crayton, appeals from the dismissal of his mandate petition. Plaintiff is a state prisoner currently incarcerated at Salinas Valley State Prison. Plaintiff filed a mandate petition against defendant, John A. Clarke. Defendant is erroneously sued as the Clerk of the Los Angeles County Superior Court. Plaintiff wanted copies of his documents filed in two older cases sent to him at Salinas Valley State Prison. Plaintiff and defendant subsequently entered into a settlement of the mandate petition on June 2, 2015. Plaintiff agreed to pay \$150 and defendant agreed to mail copies of all documents contained within the two prior cases. The trial court issued an order to show cause regarding dismissal of the action after the settlement. Plaintiff challenged the order to show cause. Plaintiff contended he had not received all the documents. An order to show cause hearing was held on September 24, 2015. The trial court continued the order to show cause hearing to October 15, 2015.

In response, defendant submitted a receipt for \$150 and two exemplifications attesting to the completeness of the court files that were provided to plaintiff. On October 5, 2015, plaintiff purportedly served: a motion to continue the order to show cause hearing; a motion to file an amended mandate petition; and a request to withdraw from the settlement. The trial court acknowledged receipt of the extension of time motion. The trial court denied plaintiff's motion for extension of time. The trial court dismissed plaintiff's petition as moot. Plaintiff asserts the trial court returned the October 12, 2015 motions unfiled. Plaintiff contends the trial court erred by: denying his motion for

extension of time; denying his right to withdraw from the settlement; denying his right to have motions and pleadings filed; and denying his right to appear in court. Plaintiff has failed to provide an adequate record on appeal.

On appeal, a judgment or final order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) All intendments and presumptions are made to support the judgment or final order on matters as to which the record is silent. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; *Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956.)

Here, plaintiff failed to include a reporter's transcript of the June 2 and September 24, 2015 hearings. Additionally, plaintiff failed to provide any adequate substitute such as a settled or agreed upon statement of the hearings. In numerous situations, appellate courts have refused to reach the merits of an appellant's claim because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 273-274 [transfer order]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication].) Plaintiff has failed to provide a reporter's transcript or an adequate substitute for the relevant hearings. Thus, we refuse to reach the merits of plaintiff's claims here.

As to the October 15, 2015 hearing, no party made an appearance. While there is a minute order, there was likely no reporter's transcript of this proceeding. However, plaintiff has not submitted a settled or agreed upon statement of the October 15, 2015 hearing.

Furthermore, we review the denial of a continuance motion for an abuse of discretion. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 1004; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126.) Plaintiff has failed to demonstrate any abuse of discretion occurred. As noted, the trial court had previously continued the order to show cause hearing from September 24 to October 15, 2015. Without a settled or agreed upon statement, we presume the trial court's order denying plaintiff a second continuance was correct. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; *Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956.)

The judgment is affirmed. Defendant, John A. Clarke,
shall recover his cost on appeal from plaintiff, Timothy Crayton.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIN, J. *

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