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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF SIERRA MADRE, Plaintiff and Respondent, v. JEFFREY M. HILDRETH and TARYN N. HILDRETH, Defendants and Appellants.	B281729 Los Angeles County Super. Ct. No. GC046442

APPEAL from a judgment of the Superior Court of Los Angeles County, William D. Stewart, Judge. Affirmed.

Tawnya L. Gilreath for Defendants and Appellants.

Dapeer, Rosenblit & Litvak, William Litvak and Caroline Karabian Castillo for Plaintiff and Respondent.

INTRODUCTION

To obtain a reversal of a judgment, an appellant must affirmatively establish both error by the trial court and prejudice from that error. And to facilitate appellate review of rulings made in the trial court, an appellant must provide the courts of appeal with a record containing all material relevant to the orders or judgment challenged in the appeal.

Here, defendants and appellants Jeffrey M. and Taryn N. Hildreth (the Hildreths) challenge a judgment rendered in favor of the City of Sierra Madre (the City) after a 27-day bench trial. The Hildreths, however, failed to provide this court with a transcript of the trial or an appropriate substitute. The Hildreths claim the issues they present are issues of law that do not require us to consider any of the evidence presented at trial. But as we explain, each of the arguments asserted by the Hildreths requires some understanding of the evidence presented during the bench trial or requires us to determine evidence essential to the judgment in favor of the City was not presented, as the Hildreths claim.

Because the Hildreths have not provided an adequate appellate record, they have failed to establish prejudicial error. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND[1]

In July 1998, the Hildreths purchased a small home in Sierra Madre. The home was in substantial disrepair and the Hildreths began a complete remodel of the home—without the

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[1] We provide a summary of the pertinent facts taken from the trial court's thorough and well-reasoned statement of decision.

benefit of any permits from the City. (Mr. Hildreth is, reportedly, a licensed contractor.) In October 1998, after the City issued a stop work order due to the absence of permits, the Hildreths requested and obtained permits (the 1998 permits) for plumbing, building, electrical and mechanical work relating to the renovation. Although the Hildreths eventually completed the work contemplated by the permits and moved into the home, they never notified the City the work was completed or requested a final inspection. Accordingly, the 1998 permits expired as a matter of law.

Around the time of the renovation, the Hildreths decided they wanted to develop the home and the property for commercial use—specifically, a wine tasting and sales business. In September 1999, the Hildreths submitted an application for a conditional use permit describing their proposed business operation and in October 1999, the City Planning Commission approved the permit (CUP 99-17). Other City residents, however, appealed the decision and the City Council granted the appeal on December 13, 1999. As a result, CUP 99-17 never went into effect. The Hildreths were present during the December 13, 1999 City Council meeting, at which time they were advised of the Council's decision and invited to apply for a conditional use permit in the future.

Notwithstanding the denial of CUP 99-17, the Hildreths proceeded to develop the property for their proposed wine business. In 2005, after an alley located adjacent to the Hildreths' property collapsed, the City discovered the Hildreths had excavated a large pit on the eastern side of their property. The City immediately issued a stop work order and required the Hildreths to work with a licensed engineer and a licensed shoring

contractor, together with the City Building Department, to install temporary shoring. The City also advised the Hildreths their unpermitted excavation undermined neighboring City property and needed immediate restoration. Subsequently, the Hildreths constructed an unpermitted cement structure in the pit which the parties referred to as a "bunker" during the trial.

Then, in early 2009, the City discovered the Hildreths had—again without permits—excavated the western portion of their property to a depth of 12 feet below ground level, including the area underneath the western side of the house. The excavated area ran the entire length of the property and extended east to the unpermitted subterranean "bunker." The City issued another stop work order.

Apparently undeterred by the City's prior interventions, the Hildreths subsequently erected a large, unpermitted deck in their front yard which extended over the public sidewalk adjacent to their property. In late October 2010, after receiving complaints from City residents, the City inspected the property and issued another stop work order.

In December 2010, the City filed a complaint against the Hildreths asserting claims for public nuisance, municipal code violations, state code violations, and seeking declaratory relief. The court subsequently issued a preliminary injunction identifying a minimum of 30 violations of state and local building codes and prohibiting the Hildreths from performing any additional work or residing in the home without required permits, inspections and approvals by the City. The court ordered the Hildreths to submit the requisite applications, plans, documents and fees to the City regarding the outstanding violations and, upon approval by the City, to remediate the home

and the property. And in August 2012, after the Hildreths failed to comply with the preliminary injunction, the court appointed a receiver to oversee the property abatement.

In December 2011, the Hildreths filed an action against the City seeking declaratory relief and claiming they had all permits necessary for the projects undertaken on their property. The two cases were consolidated and tried before the court over the course of 27 days in early 2016.

The court issued a lengthy statement of decision explaining the basis for its factual and legal findings. As pertinent here, the court found the Hildreths did not have valid permits for any of the work performed in their home or on their property, the unpermitted and unapproved construction constituted a public nuisance under the City's municipal code as well as under state law, and injunctive relief to abate the nuisance was appropriate. The court ordered the previously-appointed receiver to oversee remediation of the property based on its additional finding that the Hildreths would not be willing or able to remediate the property if given the opportunity to do so.

In sum, the court found in favor of the City on all its causes of action, found against the Hildreths on their declaratory relief action, and entered judgment accordingly. This timely appeal followed.

DISCUSSION

The Hildreths present five arguments challenging the judgment entered after the 27-day bench trial. But as already noted, the Hildreths failed to provide this court with a record or a summary of the testimony and other evidence presented to the trial court. (See Cal. Rules of Court, rules 8.130 [reporter's transcript], 8.134 [agreed statement], 8.137 [settled statement].)

Accordingly, we have no insight into the evidence upon which the judgment rests. We reject the Hildreths' contention that the issues presented for our consideration are pure issues of law requiring no understanding of the evidence presented at trial.

1. An appellant must provide an adequate record of the prior proceedings in order to establish error.

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Failure to provide an adequate record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

"In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. (*Maria P. v. Riles*[, *supra*,] 43 Cal.3d [at pp.] 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]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [trial transcript when attorney fees sought]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Null v. City of Los*

Angeles (1988) 206 Cal.App.3d 1528, 1532 [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385–386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 713–714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71–73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter's transcript [or] settled statement].)" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187.)

We now consider whether, as the Hildreths claim, the issues presented are pure issues of law requiring no understanding of the evidence presented at trial.

2. The appellants' failure to provide a transcript of the 27-day trial or an adequate substitute precludes review on the merits.

As noted, the court heard testimony and received evidence over the course of 27 days before rendering judgment in this case. The Hildreths, however, have not provided a transcript of the trial proceedings or minute orders or other documents indicating what other evidence the court received during the lengthy trial. The appendix submitted by the Hildreths includes four documents they represent to be "trial exhibits" but they fail to provide any evidence these documents were admitted into evidence. Ordinarily, these omissions would be fatal to an appeal.

In its respondent's brief, the City asserted the record provided by the Hildreths was so inadequate as to preclude our review of the issues raised. In response, the Hildreths claim to

present issues of law which, in their view, do not necessitate our review of the trial transcripts or the evidence presented. We summarize the Hildreths' five arguments on appeal and explain why, in each case, some understanding of the facts established at trial is required to facilitate our review.

The Hildreths first argue the trial court lacked "subject matter jurisdiction" in this case because the City failed to exhaust available administrative remedies. Specifically, the Hildreths assert that "[u]nder well-established case law, the Courts have held that where, as here, the law provides an administrative remedy, that administrative process must be exhausted as a condition precedent to court jurisdiction." And here, the Hildreths claim the City failed to follow the administrative procedures required by the Sierra Madre Municipal Code (municipal code) in chapters 8.16 and 1.18, and municipal code section 15.04.010 (as it existed in 2007). For example, the Hildreths represent that chapter 8.16 "make[s] it apparent that the planning commission (i) has the ability to determine whether a hearing is warranted to ascertain if conditions on a property constitute a public nuisance, (ii) has the ability at a hearing to find that conditions on the property do create a public nuisance and should be rehabilitated, demolished or repaired, and (iii) has the ability at a hearing to find that conditions on the property do not create a public nuisance and/or should not be rehabilitated." That chapter also apparently requires the planning commission to serve the property owners with a copy of the commission's resolution ordering the abatement of the nuisance, which resolution must " 'contain a detailed list of needed corrections and abatement methods.' " At that point, the Hildreths assert, a "property owner shall have the

right to have any such premises rehabilitated or to have such buildings or structures demolished or repaired in accordance with the resolution and at his own expense[.]"

The Hildreths then assert that although the City conducted an inspection in December 2009 that "confirmed and revealed numerous violations," the City "kept secret" the results of the inspection which the Hildreths claim to have been unaware of until the City filed its complaint in this matter. The Hildreths further state the planning commission did not issue a resolution, conduct a public hearing, or provide them with a description of the conditions and the proper methods of abatement. The Hildreths make similar arguments regarding municipal code chapter 1.18 and municipal code section 15.04.010.

Assuming, without deciding, the City was required to follow the procedures set forth in its municipal code before filing a lawsuit against the Hildreths, it is impossible for us to determine whether the City complied—or did not, as the Hildreths represent. We simply have no evidence to consider. An appellant does not meet his or her burden on appeal by simply claiming no evidence exists to support the court's decision. Instead, an appellant must provide the court with a complete record of the proceedings so we may evaluate that contention for ourselves, based on a thorough review of all the evidence presented.

The Hildreths' second argument fails for the same reason. They again contend the court lacked "subject matter jurisdiction" in this matter because the City failed to comply with Health and Safety Code section 17980 et seq. According to the Hildreths, "[t]he ordinary and usual meaning of Health and Safety Code § 17982, requires the enforcement agency to first issue a notice or order to the property owners. If the property owners failed to

comply within a reasonable time, only then can the enforcement agency apply to the superior court for an order authorizing it to remove or abate a violation or nuisance that was specified in the notice or order issued to the property owner." The Hildreths claim the City failed to issue a notice of violation and failed to issue an order to abate a nuisance as required under Health and Safety Code section 17982. They then conclude because the City failed to meet its obligations, the court had no jurisdiction over this case.

Again, assuming without deciding that the Hildreths are correct in their interpretation of the statute, we have no evidence before us regarding the communications between the City and the Hildreths. And as the court's statement of decision makes clear, the parties had numerous exchanges in the 12 years during which the Hildreths modified their property. Without the record of the trial proceedings and evidence presented, we have no basis to conclude, as the Hildreths claim, the City failed to provide them with appropriate notice and the opportunity to cure deficiencies on their property.

In their third argument, the Hildreths suggest "the court erred in its interpretation and statement of Health and Safety Code section 17920.3." That code provision defines a "substandard building" and contains a laundry list of conditions including nuisances, inadequate sanitation, structural hazards, and plumbing and electrical components which are not in good condition and working properly. The trial court found in favor of the City on its claim for state housing law violations predicated in part on its conclusion that the nuisance existing on the Hildreth's property violated Health and Safety Code section 17920 et seq.

The Hildreths emphasize section 17920.3 of the Health and Safety Code requires not only the existence of one of the conditions listed therein, but also that the condition exists "to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof." They then assert: "In this case, the City's failure to provide the property owners with notice of 'dangerous conditions' on the property for an entire year when said property owners were the occupants of the premises and were not hard to locate, indicates the City was not concerned for the safety of the public or the occupants. Furthermore, conditions on the property have remained basically the same since 2009. Surely a truly dangerous condition, if it existed, would have been remedied in 7+ years."

We take the Hildreths' point to be, essentially, no substantial evidence supports the court's conclusion that a dangerous condition existed on the Hildreths' property. Without a record of the evidence presented at trial, we cannot evaluate this contention.

The Hildreths' fourth argument fares no better. They again assert the City failed to provide adequate notice of the conditions constituting a nuisance and a reasonable opportunity to cure the conditions. And in support of their argument that the City's actions (or inactions) constitute a deprivation of due process under both the United States Constitution and the California Constitution, they list eight items not present in the "court record." Those items include inspection reports, notices of violations, notice of hearing, and other items they assert were required under the City's municipal code and the Health and Safety Code. But without a record to review, we cannot determine whether that is, in fact, the case. Apparently, the Hildreths

assume they can provide this court with no record of the trial but still make claims about what is not contained in that record—and we will accept their representations as true. Unfortunately for the Hildreths, this approach is wholly inadequate to establish error on appeal.

The Hildreths' final argument is, "As a matter of public policy, enforcement agencies should provide all necessary information to enable the property owners to abate violations." Not only is this argument unsupported by any evidence, but it is also unsupported by any citation to legal authority or coherent legal discussion. We decline to consider this issue. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 779–801 [several contentions on appeal "forfeited" because appellant failed to provide a single record citation demonstrating it raised those contentions at trial]; *Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 699–700 [issue not supported by pertinent or cognizable legal argument may be deemed abandoned].)

DISPOSITION

The judgment is affirmed. The City of Sierra Madre shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.