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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MARGARET MORRIS-
CALDERON,

Plaintiff and Appellant,

v.

THE JAMES RANDI
EDUCATIONAL
FOUNDATION,

Defendant and Respondent.

B290811

(Los Angeles County
Super. Ct. No. BC684574)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Margaret Morris-Calderon, self-represented, for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Jonathan D. Martin and John L. Barber, for Defendant and Respondent.

I. INTRODUCTION

Plaintiff and appellant Margaret Morris-Calderon brought an action against defendant and respondent The James Randi Educational Foundation¹ for fraud and breach of contract alleging defendant's failure to make good on its offer to pay \$1 million to any person who could prove the existence of paranormal activity. The trial court sustained without leave to amend defendant's demurrer to plaintiff's complaint and plaintiff appeals. Because plaintiff's briefs on appeal do not present a comprehensible argument, we affirm.

II. BACKGROUND

"Until 2015, [defendant] sponsored a program called 'One Million Dollar Paranormal Challenge' . . . that offered to pay \$1 Million to 'anyone who could demonstrate a supernatural or paranormal ability under agreed-upon scientific testing criteria.'" On November 16, 2015, plaintiff filed a complaint (Case No. BC601443) against defendant in the Superior Court of Los Angeles County alleging that she made available to defendant records of a four-year history of phone calls she received from her deceased mother from her deceased mother's disconnected phone line, but defendant failed to pay her \$1 million. Plaintiff asserted fraud and breach of contract causes of action against defendant.

¹ Plaintiff's complaint also named as defendants James Randi, defendant's founder, and Stefan H. Black, defendant's former registered agent for service of process. Randi and Black are not parties to this appeal.

On March 18, 2016, plaintiff filed a first amended complaint naming only Randi and Black as defendants and adding a claim under Public Contract Code section 10285.1. Randi removed plaintiff's action to the United States District Court, Central District of California. Black consented to removal.

Randi and Black then moved to dismiss plaintiff's federal court action. On February 14, 2017, the district court ruled that plaintiff's first amended complaint failed to present allegations sufficient to establish the elements required for fraud, breach of contract, and a violation of Public Contract Code section 10285.1. It granted plaintiff leave to amend the fraud and breach of contract causes of action, finding it was not "absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007)." It dismissed with prejudice the cause of action under the Public Contract Code, finding a complete absence of alleged facts that would support a Public Contract Code claim. Finally, the district court granted plaintiff leave to amend to add defendant as a defendant, finding that the allegations in the first amended complaint indicated plaintiff's apparent intent to sue defendant. The district court ordered any amended complaint to be filed on or before February 28, 2017.

On March 30, 2017, pursuant to its prior orders, the district court issued a judgment dismissing plaintiff's action with prejudice. On November 15, 2017, the United States Court of Appeals for the Ninth Circuit dismissed as frivolous plaintiff's apparent appeal from the district court's judgment. The United States Supreme Court denied plaintiff's apparent petition for writ of certiorari concerning that dismissal.

On April 10, 2017, plaintiff filed a civil rights action in federal court against defendant, Randi, and Black under 42 U.S.C. section 1983. The complaint concerned defendant's \$1 million challenge, plaintiff's presentation of evidence of life after death and paranormal activity, and, presumably, defendant's failure to pay plaintiff the prize money.

On May 2, 2017, a magistrate judge recommended that the district court deny plaintiff's request to proceed in forma pauperis. It stated, "The proposed Complaint, which is largely incomprehensible, violates Rule 8(a) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8(a) (complaint must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief'); see also McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) (complaint is subject to dismissal for failure to state a claim if 'one cannot determine from the complaint who is being sued, for what relief, and on what theory').

"To the extent the proposed Complaint repeats allegations Plaintiff made in Morrison-Calderon v. Randy, CV 16-4270-JAK(RAOx), an action previously dismissed with prejudice, the principles of res judicata and claim preclusion would render the present Complaint frivolous. See generally Cusano v. Klein, 264 F.3d 936, 948 (9th Cir. 2001); Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001).

"Plaintiff has utilized a form complaint designed for actions brought pursuant to 42 U.S.C. section 1983. However, there exists no subject matter jurisdiction under 42 U.S.C. section 1983 because Defendants did not act under color of state law. See Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991), cert. denied, 503 U.S. 938 (1992) ('private parties are not generally acting under color of state law')."

On May 4, 2017, the district court denied plaintiff's request to proceed in forma pauperis. It ordered plaintiff to pay the filing fees in full within 30 days or her case would be dismissed.

On June 6, 2017, plaintiff filed a notice of appeal from the district court's May 4, 2017, order. On August 16, 2017, the court of appeals dismissed the appeal because plaintiff had not filed her notice of appeal within 30 days of the district court's May 4, 2017, order.

On November 27, 2017, plaintiff returned to state court and filed the complaint (Case No. BC684574) that is the subject of this appeal. In her complaint, plaintiff asserted fraud and breach of contract causes of action again alleging she was entitled to defendant's \$1 million prize based on evidence she made available to defendant about her telephone communications with her deceased mother.

On March 22, 2018, defendant demurred to plaintiff's complaint asserting that plaintiff twice previously filed the exact same lawsuit against it—the November 16, 2015, action that was removed to federal court and the April 10, 2017, federal court civil rights action—and both prior lawsuits were dismissed. Accordingly, defendant argued, plaintiff's complaint was barred by the doctrine of res judicata.

On May 7, 2018, plaintiff filed a request for entry of default and court judgment. On May 17, 2018, the court clerk rejected plaintiff's request for entry of default and default judgment in part because defendant had already filed its demurrer.

On June 1, 2018, the trial court sustained defendant's demurrer without leave to amend. In its ruling, the trial court stated, "This Court has spent countless hours attempting to decipher the lengthy, handwritten documents that Plaintiff has

filed. The hand-written opposition to this [demurrer], like most of the documents that plaintiff has filed in this matter, veers between the confusing and the incomprehensible.”

The trial court then set forth elements for applying the doctrine of res judicata to a cause of action or an issue adjudicated in a prior action² and set forth the factual and procedural backgrounds of plaintiff’s prior actions. It stated that “[p]roviding access to justice for self-represented litigants is a priority for California courts.’ (California Rules of Court, rule 10.960, subdivision (b).) [¶] Nonetheless, it would not advance the cause of justice to continue this charade. Plaintiff’s complaint has been dismissed twice. The Court recognizes that Plaintiff . . . feels that she has incontrovertible proof that her deceased mother has been in touch with her from beyond the grave, and that justice will not be done until defendant . . . pays her \$1 million based on her proof of the paranormal. Everyone is entitled to her day in court. However, no matter how much she feels aggrieved, plaintiff cannot continue to file the same case over and over again. Her case against [defendant] has been dismissed twice before. Plaintiff does not get three bites at the apple. If res judicata is to mean anything, this demurrer must be sustained.”

As an alternative ground, the trial court stated that even if res judicata did not bar plaintiff’s third complaint it would dismiss the complaint on its own motion. The allegations in

² The doctrine of res judicata applies when: ““(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]” [Citation.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.)

plaintiff's third complaint, the trial court found, were "simply non-justiciable." Among other things, the trial court stated that "in order for plaintiff to prevail in this action, she would have to prove that it is more likely than not that there is life after death. [¶] . . . [¶] The Courts are not qualified to determine if there is a God or if there is life-after-death. But that latter determination is a necessary predicate to plaintiff prevailing in this action." The trial court entered judgment in defendant's favor.

III. DISCUSSION

In her form notice of appeal, plaintiff checked the boxes indicating that she was appealing from a default judgment—plaintiff apparently intended to appeal from the trial court's failure to enter a default judgment—and a judgment of dismissal after an order sustaining a demurrer. Plaintiff's briefs fail to make a comprehensible argument that the trial court erred either with respect to its failure to enter a default judgment or in entering the judgment following its order sustaining defendant's demurrer.

"We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 . . .; see also Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by 'argument and, if possible, by citation of authority'].)" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["One cannot simply say the court erred, and leave it up to the appellate court

to figure out why”]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”]; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 [deeming “the failure of appellant to advance any pertinent or intelligible legal argument . . . to constitute an abandonment of the appeal”].)

Neither plaintiff’s “argument” concerning res judicata nor her “argument” concerning default is comprehensible. Thus, plaintiff has forfeited her challenges to the trial court’s rulings.³ (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; *Niko v. Foreman*, *supra*, 144 Cal.App.4th at p. 368; *Badie v. Bank of America*, *supra*, 67 Cal.App.4th at pp. 784–785; *Berger v. Godden*, *supra*, 163 Cal.App.3d at p. 1117.)

³ As to plaintiff’s default challenge, we note that defendant filed its demurrer (March 12, 2018) prior to plaintiff filing her request for entry of default and judgment (May 7, 2018). A defendant who files a belated pleading at a time when a default has not yet been taken is not strictly in default and an untimely filed pleading serves to preclude the taking of a default unless the pleading has been stricken. (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141; see Code Civ. Proc., § 585.)

IV. DISPOSITION

The judgment is affirmed. Defendant is entitled to recover its costs on appeal.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.