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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JORGE ORTEGA,

Plaintiff and Appellant,

v.

LEAH ORTEGA et al.,

Defendants and Respondents.

2d Crim. No. B270151  
(Super. Ct. No. 56-2014-00456792-  
CU-PO-VTA )  
(Ventura County)

Plaintiff Jorge Ortega (appellant) appeals a judgment in his action for conversion of personal property and breach of contract against Leah Ortega, Alejandro R. Reyes, Laura Ortega and Roman Reyes (defendants). Appellant has failed to produce an adequate record. His motion to hold defendants in contempt is legally insufficient. We affirm.

**FACTS**

Appellant filed an action for conversion of personal property and breach of verbal agreement against defendants. He alleged defendants took 28 items of personal property without his consent. He sought injunctive relief and damages.

In her answer defendant Laura Ortega denied that she took the property without appellant's consent. She said he

“agreed to transfer all personal property located in storage to . . . [her] home.”

After a court trial, judgment was entered “in favor of [appellant] and against defendant Leah Ortega for the return of the following personal property: a table and chairs, a mirror, and an Aztec calendar.” Judgment was entered “in favor of Defendants Alejandro R. Reyes and Roman Reyes, and against [appellant].”

Appellant filed a motion to hold defendants in contempt for submitting false information to obtain a waiver of court fees. The trial court denied this motion and denied his motion for a new trial.

## DISUSSION

### *Adequacy of the Record*

Appellant contends the trial court erred: 1) by not ordering that “all of [his] personal [property] in possession of the defendants” be returned to him; 2) by not holding an evidentiary hearing to decide whether defendants “submitted false information to obtain a waiver of court fees” and should be held in contempt; and 3) by denying his motion for a new trial.

But appellant has not produced an adequate record. There are no reporter’s transcripts, settled statements (Cal. Rules of Court, rules 8.130, 8.137), agreed statements (*id.*, rule 8.134), statements of decision or findings. He relies on an incomplete clerk’s transcript which is not adequate for review (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295), and he raises factual claims without citing to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1037.)

The trial court’s rulings may not be challenged because appellant has not produced the trial transcripts

containing the evidence the court considered to make its findings. (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532.)

Appellant contends the trial court abused its discretion by denying his motion for new trial and his motion to hold defendants in contempt. But he concedes that the document or documents that contain the court's findings are not in the record. The absence of those findings precludes a review for abuse of discretion. (*Null v. City of Los Angeles, supra*, 206 Cal.App.3d at p. 1532.)

Moreover, appellant's "*motion*" to hold defendants in contempt was procedurally deficient. (*Koehler v. Superior Court* (2010) 181 Cal.App.4th 1153, 1169 [a contempt proceeding is initiated by the personal service of an *order to show cause* re contempt]; Code Civ. Proc. §§ 1211, 1212.) The motion was contested. Defendant Laura Ortega declared appellant's contempt motion was filed to harass her after she rejected a settlement offer. The court "considered" the "declarations" and denied the motion. The credibility of those declarations was a matter exclusively decided by the trial court. (*Consolidated Produce Co. v. Pieper* (1950) 100 Cal.App.2d 631, 635; see also *People v. Morton* (2003) 114 Cal.App.4th 1039, 1047-1048.) We do not decide credibility. "[W]e are not empowered to reweigh the evidence . . . ." (*Morton*, at p. 1048.) "On appeal, presumptions favor the trial court's proper exercise of its authority." (*Ibid.*)

A party who seeks to hold his adversaries in contempt must meet a strong burden of proof. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) "[T]he filing of a sufficient affidavit is a jurisdictional prerequisite to a contempt proceeding." (*Koehler v. Superior Court, supra*, 181 Cal.App.4th at p. 1169.) The court could find appellant's declaration was not sufficient. Appellant relied on conclusory allegations and

speculation. For example, he said defendant “Roman Reyes’ salary is way more than the amount required . . . for court fees [waiver], *but if unemployed* Roman Reyes earns more than the amount indicated in the form for the application of fees waiver . . . .” (Italics added.) The court could reasonably find he was making allegations without knowing defendant’s current employment status. (*In re Blache* (1940) 40 Cal.App.2d 687, 691 [a party may not be found guilty of contempt on “the mere suspicion” that he or she made a false statement].)

In addition, appellant is not entitled to the relief he seeks--another contempt hearing. The trial court heard and denied his contempt motion. Defendants cannot be retried for contempt. (*Wanke, Industrial, Commercial, Residential, Inc. v. Keck* (2012) 209 Cal.App.4th 1151, 1164-1168 [double jeopardy applies to nonsummary criminal contempt proceedings initiated by private parties in civil litigation]; *Koehler v. Superior Court, supra*, 181 Cal.App.4th at p. 1158 [“even though they are denominated civil, these proceedings are criminal in nature because of the penalties that a judge may impose”].)

We have reviewed appellant’s remaining contentions and we conclude he has not shown grounds for reversal.

#### DISPOSITION

The judgment and orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Henry J. Walsh, Judge  
Superior Court County of Ventura

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Jorge Ortega, in pro. per., for Plaintiff and Appellant.  
No appearance for Defendants and Respondents.